

Opinion No. 76.

Milk Control Board—Distribution of
Milk—Board, Milk Control.

Held: The Milk Control Board has the power to authorize milk produced in any one day distributed the same day to one district, and milk produced the next day distributed to the other district, when the area served is divided into two districts, and the whole of the daily output of milk is distributed on alternate days to first one district and then the other.

October 10, 1945.

Mr. A. A. Klemme,
Executive Secretary
Montana Milk Control Board
State Capitol
Helena, Montana

Dear Mr. Klemme:

You have requested my opinion as to whether milk may be delivered every other day by producers and distributors of milk. The delivery of milk every other day is done by dividing

the town or area served into two districts and the milk available for delivery one day is delivered to one district, and the milk available for delivery the next day is delivered to the other district.

Chapter 204, Laws of 1939, creates the Milk Control Board, defines its powers and duties and defines the duties and regulations for milk dealers, milk producers, milk distributors and other related matters.

Section 1 of Chapter 204, Laws of 1939, provides in part:

"It is hereby declared: . . .

"(h) Flat fluid milk is a perishable commodity which is easily contaminated with harmful bacteria, which cannot be stored for any great length of time, which must be produced and distributed fresh daily, and the supply of which cannot be regulated from day to day, but, due to natural and seasonal conditions, must be produced on a constantly uniform and even basis . . ."

Section 5 of Chapter 204, Laws of 1939, provides in part:

"The board is hereby vested with the powers, and it shall be its duty to supervise, regulate and control the fluid milk industry of the State of Montana, including the production, transportation, processing, storage, distribution and sale of milk in the State of Montana for consumption within the state . . ."

The declaration contained in Section 1 of Chapter 204, which is quoted above, recognizes the fact that milk cannot be easily stored and must be distributed daily. The proposed plan of every other day delivery does not mean that milk is stored by the producer, but that each day's fresh supply is delivered to the consumer on each delivery day from the fresh milk available for delivery that day. The ultimate result is, from the standpoint of the producer, there is daily delivery of milk produced that day although the same customer does not receive milk daily. There is compliance with the requirement of daily delivery of the fresh milk produced that day.

The portion of Section 5 above quoted gives to the Milk Control Board the power to regulate and control the

distribution of milk and thus make necessary rules.

It is therefore my opinion that the Milk Control Board has the power to authorize milk produced in any one day distributed the same day to one district, and milk produced the next day distributed to the other district, when the area served is divided into two districts, and the whole of the daily output of milk is distributed on alternate days to first one district and then the other.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General