

Opinion No. 90.

**Milk Control Board—Price, milk—
Locality, milk to be sold.**

**Held: Distributing plants must pay
the producer the established
price of a designated area re-
gardless of whether or not the**

producer lives in said established area.

November 3, 1945.

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

Dear Mr. Klemme:

You have requested an opinion regarding the price to be paid producers who do not reside in the designated area of an established milk control marketing area. You state that some of the distributors are of the opinion that when they buy milk outside the area, they do not have to pay the producer the schedule price. However, the producers deliver or ship the milk to the plants, and the milk is sold in the designated area. Therefore, the question here is as follows:

Must the distributing plants pay the producer the established price of a designated area regardless of whether or not the producer lives in said established area?

Under the provisions of Section 7, Chapter 204, Laws of 1939, the Milk Control Board has authority to investigate and determine the reasonable costs and charges for producing, hauling, handling, processing, and other services performed in respect to milk and the price for milk in the several localities and markets of the state. Also under varying conditions, the Milk Control Board will determine what will best protect the milk industry in the state, and insure a sufficient quantity of pure and wholesome milk to adults and minors in the state, and be for the best public interest.

The board shall take into consideration the balance between production and consumption of milk, the cost of production and distribution, and the purchasing power of the public.

Under the provisions of subdivision (a) of said Section 7, Chapter 204, Laws of 1939, the board, after making an investigation, shall fix by official order:

"(a) The minimum prices to be paid by the milk dealers to producers and others for milk. The orders of the board with respect to the

minimum prices to be paid to producers and others shall apply to the locality or zone in which the milk is produced in respect to the market or markets in which milk so produced is sold, and may vary in different localities or zones or markets according to varying uses and different conditions. Each order fixing prices or handling charges may classify milk by forms, classes, grades or uses as the board may deem advisable and may specify the minimum prices therefor."

Therefore, we seek to inquire as to (1) the zone or locality in which the order is to apply, and (2) in respect to what market.

Subdivision (a) makes it plain that the order shall apply to the locality or zone in which the milk is produced, but in respect, however, to the market or markets in which milk so produced is sold. In other words, it is the sale price charged within a designated area or market that governs the producer's price of milk. The fact that the producer is within or without a designated area or market is of no consequence. This is not the deciding factor. The producer is not confined to the sale of his milk in any one designated area or market. He may sell and dispose of his milk at any market, but in so doing, he is governed by the sale price charged by the distributor of that particular designated area.

Therefore, it is my opinion that distributing plants must pay the producer the established price of a designated area regardless of whether or not the producer lives in said established area.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General