

Opinion No. 65

Milk Control Board—Marketing
Area—County.

Held: The Montana Milk Control Board may establish a "market" which includes all the cities, towns, or communities of an entire county if the board determines in its sound discretion all such cities, towns, or communities of such county are a "NATURAL marketing area."

September 16, 1947

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

Dear Mr. Klemme:

You have inquired whether the Montana Milk Control Board may designate an entire county as a "market" and establish retail prices for milk and cream in the entire county. You have explained in your letter of inquiry the problem arises in Flat-head County, where the Kalispell Dairymens' Association has requested establishment of prices for the entire county.

Establishment of new markets by the Montana Milk Control Board is governed by sub-section (b) of Section 6, Chapter 204, Laws of 1939:

"The board shall have power, at its discretion, to establish a new market in any natural marketing area of the State that it may designate, provided that before a designated market shall be established, a canvass shall be made by the board, of all producers, producer-distributors and distributors doing business within the designated market and who are licensed by the Montana livestock sanitary board and who have been, for not less than ninety days, actually engaged in any

one of the above indicated branches of the fluid milk industry and in the event that such preliminary canvass shall make it evident to the board that a majority of all the above-designated dealers representing a majority of the fluid milk sold by all said dealers licensed by the Montana livestock sanitary board are in favor of the establishment of such proposed market, the board shall proceed toward the establishment of such market but shall be restrained therefrom until such time as it shall be made evident to the board that a majority of the above-designated dealers are favorable to the establishment of such a market." (Emphasis mine).

Section 3 of Chapter 204, Laws of 1939, defines "market" in these words:

"'Market' means any city, town, or community of the State, or two or more of the same designated by the board as a natural marketing area." (Emphasis mine).

The legislative assembly, in defining "market", you will notice, did not specifically provide the word should include "county", but inasmuch as two or more cities, towns, or communities may be designated by the Milk Control Board as a "natural marketing area" it is not inconceivable there may be instances in Montana where a "market" will embrace an entire county. The designation of what is a "natural marketing are: is a responsibility of the Montana Milk Control Board; and since the method for the board's determination and designation is not outlined in the Milk Control Act, I am of the opinion it is to be determined within the board's sound discretion.

This office is not possessed either with the desire or authority to interfere with the board's discretion. The board is empowered by Chapter 204 Laws of 1939 to conduct investigations and to hold public hearings in order to carry out its duties of supervising, regulating and controlling the fluid milk industry of this state. I believe those powers are sufficiently broad so that the board may inform itself of the various cost factors, geo-

graphical factors, and consumer purchasing factors, which it should have prior to designating any group of cities, towns or communities a **natural** marketing area.

It is, therefore, my opinion the Montana Milk Control Board may establish a "market" which includes all the cities, towns, or communities of an entire county if the board determines in its sound discretion all such cities, towns, or communities of such county are a "**natural** marketing area."

Sincerely yours,
R. V. BOTTOMLY,
Attorney General