

Opinion No. 18**Milk Control Board—Market Areas—Price Fixing By Board—
Transportation Charges.**

- Held:**
- 1. A milk dealer who buys milk in one market area and sells it in another market area must pay the producer or producers of such milk the price set by the Montana Milk Control Board for the area wherein the dealer sells the milk.**
 - 2. The transportation charges incident to shipping such milk from one market area to another must be borne by the milk dealer and cannot be charged against the producer or producers.**

May 6th, 1949.

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

Dear Mr. Klemme:

You have submitted the following questions for my opinion:

1. "If A operates a milk plant in a Milk Control Area, purchases milk from licensed producers in said area, processes, bottles, and ships it into another Milk Control Board Area in which B operates, but B's price set by the Board to producers in his area is higher than that paid by A in his area, is the distributor operating in A area required to pay his producers for milk shipped into B area the same as B is paying his producers?"

2. "In a situation where a distributor purchases milk in one market area and ships it to another market area for sale, who must bear the transportation charges? Can the distributor charge it off on the price he pays the producers, i.e. make the producers pay the transportation charges, or must the distributor himself stand responsible for the shipping charges?"

The authority of the Montana Milk Control Board to fix minimum milk prices is set forth in Chapter 204, Montana Session Laws of 1939. The following portion of Section 7 of Chapter 204, Montana Session Laws of 1939 is pertinent with respect to your questions:

"The board, after making such 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. . . ." (Emphasis supplied.)

The phrase "in respect to the market or markets in which milk so produced is sold," is the controlling portion of the above quoted section. The price to be paid to the producer depends not upon the price set for the market area wherein the milk is produced but rather as is expressly set out in Section 7 of Chapter 204, Montana Session Laws of 1949, such price depends upon the price set in the market area wherein the milk is sold.

In answer to your second question, it is my opinion that the distributor (dealer) must pay the transportation charges himself. Section 7 of Chapter 204, Montana Session Laws of 1949, says the producer shall receive the minimum price paid in the market area. It does not mention any procedure for subtracting transportation charges from such minimum price. From an equitable viewpoint it appears to be just that the distributor, rather than the producer, should bear such burden since it is for the distributor's own purposes that the milk is shipped to another market area.

It is therefore my opinion that a dealer who buys milk in one market area and sells it in another market area, must pay the producer or producers of such milk the price set by the Montana Milk Control Board for the area where the milk is sold, and cannot subtract from such minimum price the transportation charges incident to shipping the milk from one market area to another, but rather the dealer must be responsible for such charges, insofar as the minimum price set by the Milk Control Board is concerned.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.