

Opinion No. 6**Public Health Service Milk Ordinance—Short Form—Municipalities Permits.**

HELD: Municipalities in Montana may adopt as an ordinance the short form of the Public Health Service Milk Ordinance and municipal permits to operate are an effective exercise of the police power.

April 7, 1955.

Mr. Thomas F. Lofthouse
Dairy and Milk Sanitation
Livestock Sanitary Board
Helena, Montana

Dear Mr. Lofthouse:

You have asked my opinion on the following questions:

1. May small municipalities in Montana adopt as an ordinance the short form of the Public Health Service Milk Ordinance?
2. What is the legal status of permits or licenses to operate where the short or long form is adopted?

The short form code referred to above is entitled as follows:

"An ordinance to regulate the production, transportation, processing, handling, sampling, examination, grading, labeling, (regrading), and sale of milk and milk products; the inspection of dairy herds, dairies, and milk plants; the issuing and revocation of permits to milk producers, haulers, and distributors; and the fixing of penalties."

The Montana Milk Control Board, as provided in Section 27-405, R.C.M., 1947, has the general power to supervise, regulate and control the fluid milk industry in the State of Montana. This includes the control of production, transportation, processing, storage, distribution and sale of milk in the State of Montana. The Montana Livestock Sanitary Board has the general power and duty, as provided in Section 46-208, R.C.M., 1947, to supervise and regulate the standards and sanitary condition of

dairies, milk depots, milk and its by-products and places of intended sale and consumption. This includes the authority of inspection which is a necessary attribute thereof.

Section 46-217, R.C.M., 1947, herein set forth, authorizes the enactment and enforcement of ordinances by municipal corporations for the inspection of dairies, dairy products, creameries and butter and cheese factories:

"Authority Of Municipal Corporations. Nothing in this act shall prevent the governing authority of any municipal corporation from enacting or enforcing ordinances providing for the inspection of slaughter houses, meat depots, meat markets, meat-food products, creameries, butter or cheese factories, dairies, and dairy products, sold or offered for sale within the limits of such municipal corporation; but no such ordinance shall be enforced in conflict with the powers of this act delegated to the livestock sanitary board, its officers or agents."

These ordinances are proper so long as they do not conflict with the power and controls of the State Boards. The short form code, among other things, authorizes the inspection of dairy herds, dairy and milk products and also authorizes the issuance and revocation of local permits to operate.

The purpose of the various regulations above referred to is to protect the public health. Consistent with these statutory objectives, the municipal authorities generally under their broad charter powers may by ordinance safeguard the health of their inhabitants. Section 46-217, supra, is additional statutory authority providing for ordinances directed toward insuring that a safe and wholesome supply of pure milk be available for human consumption. Consequently, it is my opinion that municipal corporations may by ordinance accept the short form of the United States Public Health Service Milk Ordinance as a standard of milk regulation, and so much of that code may be effectuated as does not contravene and conflict with existing State regulations.

In answer to your second question, examination of the short and long form of the above mentioned code indicates that the municipalities are authorized to issue and revoke permits to operate for milk producers, haulers and distributors. The permits so provided are necessary in enforcing the regulatory ordinance. They are effective as to the operations within the municipality and in light of pre-existing legislative enactments such permits are proper exercise of the police power of the municipality.

It is, therefore, my opinion:

1. That municipalities may adopt by ordinance the short form of the United States Public Health Service Milk Ordinance Code.
2. That it is proper for the local authorities to issue permits and revoke permits in accordance with the ordinance as adopted.

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