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MILK MARKETING LAW — DEALER IN MILK OR CREAM — REQUIRED TO PAY PRODUCER — SECTION 1080-15 GENERAL CODE — SECTIONS 1080 TO 1080-24 GENERAL CODE, NOT APPLICABLE TO DEALERS OUTSIDE OHIO — STATEMENTS FILED WITH DIRECTOR OF AGRICULTURE — PROOF OF FINANCIAL RESPONSIBILITY — FILED BY COOPERATIVE ASSOCIATION AND DEALERS — LICENSE TO DAIRY IN RECEIVERSHIP — COMPLIANCE, SECTION 1080-16 GENERAL CODE.

SYLLABUS:

1. If a dealer in milk or cream fails to pay any one or more of the producers, from whom he purchased such milk or cream on the dates when such payments were due, he must file with the director of agriculture a sworn statement containing the names and addresses of producers not so paid and the amount payable to each in accordance with the provisions of Section 1080-15, General Code.

2. The provisions of the milk marketing law (Sections 1080 to 1080-24, inclusive, General Code) are not applicable to dealers outside of Ohio even though they purchase milk or cream from Ohio producers.

3. The statements provided for in Section 1080-15, General Code, must be filed with the director of agriculture and kept in his office.

4. Where a cooperative association collects milk from producers, delivers the same to dealers, receives payment therefor and distributes such sum among the producers, both the cooperative association and the dealers must file proof of financial responsibility as provided in Section 1080-16, General Code.

5. A license to engage in the business of dealing in milk or cream may not be issued to a dairy which is in receivership, unless the receiver complies with the provisions of Section 1080-16, General Code.

Columbus, Ohio, January, 27, 1942.

Hon. John T. Brown, Director of Agriculture,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion as follows:

"I am sending you the following questions relative to the new milk marketing law, H. B. 569, for your opinion:

1. Section 1080-15: if a dealer does not pay a single producer, will it be necessary for him to file a report stating the names of the producers not paid? If he pays one, the contention has been made that he will not have to file the list of others not paid. The question here seems to be over the word "any." No doubt the intent of the law is that if any one producer is not paid during any month, then the entire list of all producers not paid shall be filed with the Director.

2. Suppose a company is located in a neighboring state and purchases milk or cream from Ohio producers but the milk or cream is weighed, sampled and tested in the neighboring state. The question arises whether Ohio producers under such a set-up can expect protection as provided in the Ohio law.

3. Section 16 in the printed form of the Act, H.B. 569, second paragraph, refers to certain monthly reports to be filed with the Director, setting forth the prices paid for milk or cream and also the utilization of the milk or cream. The Director has the power to set up market areas and to designate a central agency within each area for the purpose of auditing payments to producers and the schedule of uses as provided in Section 18 of the law. Now the question arises in this connection whether it will be possible for any dealer to send his monthly report to this central agency in lieu of the second paragraph of Section 16. Secondly, can the Director set up rules and regulations covering this point, which is desired, with this second paragraph of Section 16 stated as it is?

4. Another case has just come to my attention. We have a question in a market area where a cooperative association collects milk from producers and in turn delivers it to the dealers in the market. The dealers pay the cooperative association and they in turn pay the producers of milk. The question is who is to file proof of financial responsibility for paying for the milk, the cooperative association or the dealer or both.

5. In this same market, another question arises, the case of a certain dairy that was placed in the hands of a receiver in April 1940, and since that time has been operating under the receivership. The question in this connection is how shall they establish their financial responsibility."

All of the questions you have presented involve the provisions of the milk marketing law, Sections 1080 to 1080-24, inclusive, of the

General Code. The questions will be considered in the order presented.

Your first inquiry involves Section 1080-15, General Code, which provides in part:

“Within thirty days after this act shall become effective each dealer shall file with the director a statement setting forth the day or days of each calendar month on which payment is to be made to producers. Whenever any dealer does not pay any of his producers on such day or days, he shall file with the director a sworn statement containing the names and addresses of producers not so paid and the amount payable to each.”

The clear intent and meaning of the foregoing may be ascertained by reading the entire provision. Each dealer is required to file with the director of agriculture a statement specifying the day or days on which such dealer's producers will be paid. Thereafter, if any of the producers are not paid on the date specified, the dealer must file a statement with the director setting forth the name or names of the producers not paid and the amount owing to each. Therefore, it is the requirement of this section that unless all producers are paid on the dates specified the names of the producers not paid together with the other information specified in such section must be filed with the director.

You next inquire as to what protection is afforded by the Ohio law to Ohio producers who sell milk to a dealer located in another state, which milk is weighed, sampled and tested in such other state.

It is elementary that legislative enactments can only operate upon persons and things within the territorial jurisdiction of the law making power, and therefore, no Ohio law has any authority or effect beyond the territorial limits of the state. You are advised, therefore, that the provisions of the Ohio law can afford no protection to those producers who sell milk and cream to dealers outside the state.

With reference to your third inquiry, Section 1080-15, General Code, provides in part:

“Thereafter on or before the twentieth day of each calendar month, each dealer shall file with the director a statement setting forth the price or prices paid for milk or cream delivered to him by producers during the preceding calendar month and also setting forth the method or methods by which payments to individual producers or a cooperative association were computed. The director shall file such statements and the same or copies thereof shall be open to public inspection at all times during office hours.”

You inquire whether the reports above mentioned must be sent to the director or whether the same may be sent to the central agency in

the market area in which the dealer is located, when such area has been established under the provisions of Section 1080-17, General Code, which section provides in part:

“Whenever, as individuals or through one or more co-operative associations, producers supplying milk or cream to one or more dealers in any market petition the director to approve a plan of weighing, sampling, or testing such milk or cream, or of auditing payments to such producers and schedule of uses, or of more than one of such functions, or petition that such functions be performed more frequently than they are ordinarily performed by the director under this act, and whenever, after public hearing held in the market by the director after two weeks’ notice thereof in a newspaper of general circulation in the market and after notice thereof has been mailed to all licensees who may be affected, the director deems the market service requested to be advisable he may provide or authorize for the same in such manner as he finds advisable.”

It is expressly provided in Section 1080-15, General Code, that the statement relative to dates of payment, the statement of delinquencies, and the statement setting forth the price paid and the methods by which such prices are computed, shall be filed with the director. Furthermore, it is mandatory that the director of agriculture file such statements. This obviously means that such statements shall be maintained on file in the office of the director where, by force of statute, the same, or copies thereof shall be open to public inspection during office hours. Although the director of agriculture is authorized, by Sections 1080-6 and 1080-13, General Code, to formulate and prescribe rules and regulations, such rules and regulations may not alter the law as enacted by the Legislature, and the director has no authority to prescribe that such statements shall be filed at some place other than the office of the director of agriculture.

You next inquire as to who shall file proof of financial responsibility in a situation where a cooperative association collects milk from producers, delivers the milk to the dealers, receives payments therefor and distributes such sum among the producers. Pertinent to this question is Section 1080-16, General Code, which provides in part:

“In order to provide assurance that milk or cream delivered to him by producers will be paid for, each dealer or any co-operative association making payments to producers for milk or cream except as hereinafter provided shall adopt one of the following methods:

“1. He shall file and maintain with the director a suitable bond to the State of Ohio. Such bond shall be of an amount

determined by the director to be not less than twice the value of milk or cream purchased by such dealer during an average pay period of the preceding twelve months or, if figures are not available, in such amount as the director may require, and such bond shall be conditioned upon the prompt payment by the dealer for all milk or cream purchased by him; or

"2. He shall deposit with a trustee satisfactory to the director, cash or negotiable securities of any kind authorized by the laws of Ohio for investment of trust funds, equal in value to an amount as determined in the foregoing subsection (1); or

"3. He shall file with the director a complete sworn financial statement showing all assets and liabilities with such pertinent and necessary supporting data as the director may require and shall revise such statement as frequently as the director may require.

"If at any time upon examination of any financial statement and other pertinent factors, the director is of the opinion that the dealer filing the same does not provide sufficient security for payment of producers, he may issue an order requiring such dealer to make deposit with a trustee, in cash, at such times and in such amounts as the director finds to be sufficient to pay producers of such dealer for milk or cream delivered during the current pay periods, from which funds, payments to producers shall be made as ordered by the director or to amend the plan of payment so as to provide for more frequent payments for milk or cream delivered. Failure to comply with an order so made shall be cause for revocation or suspension of license."

It will be noted that the foregoing section requires each dealer or cooperative association making payments to producers for milk or cream to file proof of financial responsibility.

The term "cooperative association" is defined in Section 1080, General Code as follows:

"'Cooperative Association' shall mean any association organized under the provisions of sections 10186-1 to 10186-30 of the General Code or under similar laws of another state and qualified to do business in the State of Ohio if such association shall be found by the director to have, in good faith, its entire activities under the control of its members and to have and to be exercising full authority in the sale of milk or cream for its members."

By virtue of the provisions of Section 1080-1, General Code, every person, firm, corporation or association desiring to engage in the business of handling milk or cream must file an application for a license. Such application must be accompanied by evidence of financial responsibility. That cooperative associations are subject to the licensing provisions of the act, and, therefore, must file proof of financial re-

sponsibility, is obvious from a reading of Section 1080-18, General Code, which provides:

“Nothing contained in this act shall restrain, limit, prejudice, abrogate or take from any cooperative association the powers, privileges and rights, granted them under section 10186-1 to section 10186-30 inclusive of the General Code of Ohio, and specifically and without limitation to the foregoing provision, shall not derogate from or prejudice any rights of any cooperative association, provided such cooperative association and its employees comply with the licensing provisions of this act.”

In view of the foregoing, I am of the opinion that the cooperative association, in the situation presented, must file evidence of financial responsibility. It receives milk from producers and pays them therefor, and consequently such association must comply with the provisions of Section 1080-16, General Code.

The word “dealer” is defined in Section 1080, General Code, as follows:

“‘Dealer’ shall include every person, except a producer-distributor producing two-thirds of the milk he sells, who handles milk or cream except where such milk or cream is disposed of in the same container in which it is received and without removal from such container and without processing in any way except by necessary refrigeration.”

It appears that the dealer, in the instant question, receives milk from producers and pays them therefor even though the milk is collected and delivered by the cooperative association which association receives payment and distributes the proceeds among the producers. Such dealer, therefore, also must file evidence of financial ability to pay for the milk purchased.

However, it should be pointed out that no purchaser of cream must comply with Section 1080-16, General Code, if he pays for purchases on or before the time of the next delivery. This exemption is set forth in Section 1080-16, General Code, as follows:

“The provisions of this section shall not apply to purchasers of cream who pay for purchases on or before the time of the next delivery.”

You next inquire as to how a dairy which is in receivership can establish its financial responsibility. It will be noted that Section 1080-16, General Code, requires each dealer to file a bond, financial statement or deposit securities in accordance with the provisions of such section.

With reference to the payment of taxes it has been uniformly held that property in the custody of a receiver remains subject to assessment and payment of taxes. This rule is stated in 34 O. Jur., at page 1026, as follows:

“The right to impose and collect taxes is one of the attributes of government. Property in the custody of a receiver remains subject to assessment and payment of all legal taxes thereon to the same extent as it was while in the possession of the owner.”

A question similar to the one you have presented was considered in the case of *State of California vs. Gillis*, 69 F. (2d) 746, wherein the first headnote reads as follows:

“Federal District Court *held* without power to order federal equity receiver of corporate oil distributor to operate corporation's business without posting bond required by state statute.”

In the foregoing case the Court considered a California law which made it unlawful for any person to act as a distributor of motor vehicle fuel without first obtaining a license and executing bond conditioned to pay taxes and observe other requirements. The Court also referred to 28 U.S.C., Section 124, which provides:

“Whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property according to the requirement of the valid laws of the State in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof. Any receiver or manager who shall wilfully violate any provision of this section shall be fined not more than \$3,000, or imprisoned not more than one year, or both.”

While Ohio has no statute comparable to the one above quoted, it is obvious that if a receiver is appointed by a Court of this state, the laws of Ohio apply to his conduct of the business. Therefore, the principles enunciated in the *State of California vs. Gillis* case, *supra*, are applicable to the question here considered. In that case the Court said at page 748:

“But compliance by a receiver with the State statute is a condition precedent to his right to engage in the business referred to; and if the receiver cannot comply therewith, we think the estate should be liquidated and receivership closed.”

It therefore appears, that the dairy in the situation presented by you must exercise and comply with one of the options contained in Section 1080-16, General Code. If it does not so comply, then it is not entitled to a license to carry on the business of dealing in milk or cream.

Therefore, in specific answer to your inquiries, I am of the opinion that:

1. If a dealer in milk or cream fails to pay any one or more of the producers from whom he purchased such milk or cream on the dates when such payments were due, he must file with the director of agriculture a sworn statement containing the names and addresses of producers not so paid and the amount payable to each in accordance with the provisions of Section 1080-15, General Code.

2. The provisions of the milk marketing law (Sections 1080 to 1080-24, inclusive, General Code) are not applicable to dealers outside of Ohio even though they purchase milk or cream from Ohio producers.

3. The statements provided for in Section 1080-15, General Code, must be filed with the director of agriculture and kept in his office.

4. Where a cooperative association collects milk from producers, delivers the same to dealers, receives payment therefor and distributes such sum among the producers, both the cooperative association and the dealers must file proof of financial responsibility as provided in Section 1080-16, General Code.

5. A license to engage in the business of dealing in milk or cream may not be issued to a dairy which is in receivership, unless the receiver complies with the provisions of Section 1080-16, General Code.

Respectfully,

THOMAS J. HERBERT
Attorney General.