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BUREAU OF MARKETS—IN ABSENCE OF MUTUAL INVITATION OR CONSENT, NO AUTHORITY TO MEDIATE OR ARBITRATE DISPUTES—PRODUCERS—DISTRIBUTORS—DUTY TO INVESTIGATE COSTS OF PRODUCTION AND MARKETING OF FOODSTUFFS—DIRECTOR OF AGRICULTURE AUTHORIZED TO EXAMINE BOOKS, PERSON OR CORPORATION — SECTIONS 1089-2, 1101 G. C. — AKRON AREA—MILK.

SYLLABUS:

1. *In the absence of mutual invitation or consent, the Bureau of Markets has no authority to mediate or arbitrate a dispute between producers and distributors.*

2. *By virtue of Section 1089-2, General Code, it is the duty of the Bureau of Markets to investigate the costs of production and marketing of foodstuffs.*

3. *In such investigation, the Director of Agriculture is authorized under the provisions of Section 1101, General Code, to examine the books of any person, corporation, etc., subject to the provisions of the laws.*

COLUMBUS, OHIO, July 24, 1939.

HON. JOHN T. BROWN, *Director of Agriculture, State Office Building, Columbus, Ohio.*

DEAR SIR: Your recent request for my opinion reads as follows:

"I am in receipt of a petition signed by producers of milk in a certain area of Ohio, which petition reads as follows:

'We, the undersigned, certify that we are producers of milk in the area of the market of Akron, Ohio; that there exists now, and has existed for some time past, a condition of marketing and distributing of milk in the Akron area which is uncertain, unfair and unjust to the producers. We believe the foregoing should have the immediate and serious consideration of your department.

Referring to the General Code of the State of Ohio, No. 1089-2, we respectfully petition and request that you cause an investigation to be made of the cost of production and marketing in all of its phases of milk in the Akron market, and that you further lend aid and encouragement and cooperation with us as producers to improve the relations and service among producers, distributors and consumers of milk in the area.'

I would like to have your opinion as to what duty and authority rests in the Director of Agriculture relative to the situation presented in the above petition considering Sections 1089-2 and 1101, General Code."

The provisions of law pertinent to the question you have presented are found in Sections 1089-2 and 1101, General Code. Section 1089-2, General Code, provides:

"It shall be the duty of said bureau of markets:

To investigate the cost of production and marketing in all its phases.

To gather and disseminate information concerning supply, demand, prevailing prices, and commercial movements, including common and cold storage of food products and maintain market news service for the purpose of disseminating such information.

To promote, assist and encourage the organization and operation of co-operative and other associations and organizations for improving the relations and services among producers, distributors and consumers of food products.

To have power to make rules and regulations for the grading, packing, handling, storage, and sale of all food products within the state, not contrary to law and to enforce such rules and regulations by actions or proceedings in any court of competent jurisdiction.

To investigate the practice and methods and any specific transaction of commission merchants and others who receive, solicit, buy, handle on commission, or otherwise, food products.

To act as mediator or arbitrator, when invited, in any controversy or issue that may arise between producers and distributors and which affect the interest of the consumer.

To act on behalf of the consumers in conserving and protecting their interest in every practicable way against excessive prices.

To act as market adviser for producers and distributors, assisting them in economical and efficient distribution of food products at fair prices.

To encourage the establishment of retail municipal markets and to develop direct dealing between producers and consumers.

To encourage the consumption of Ohio grown products within the state; to inspect and determine the grade and condition of farm produce both at collecting and receiving centers.

To take such means and use such powers, relative to shipment, transportation and storage of food stuffs of any kind, as

may be necessary and as it may deem advisable or desirable in case of emergency creating or threatening to create a scarcity of food within the state.

The director of agriculture shall adopt and may amend from time to time schedules of fees to be charged for inspecting farm produce at collecting and receiving centers or such other services as may be rendered under this act. All such fees shall be made with a view to the minimum cost and to make this branch of the department of agriculture self-sustaining. All fees shall be turned into the state treasury and credited to the 'inspection fund' hereby created and for use in carrying out the purposes of this act. If, in any year, the balance in said 'inspection fund' is not sufficient to meet the expenses incurred pursuant to this act, the deficit shall be paid from funds appropriated for the use of the department of agriculture."

Section 1101, General Code, provides :

"To carry out the purpose of the laws which they are required to administer, the board of agriculture, or any member thereof, the secretary of agriculture, or any person or persons designated by the secretary for that purpose, shall, upon demand, have the right to inspect books, accounts, records, and memoranda of any company, firm, corporation, persons, association or co-partnership, subject to the provisions of such laws, and to examine under oath any person, including any officer, agent or employe of any such company, firm, corporation, person, association, or co-partnership. Any person, other than a member of such board of agriculture, or the secretary of agriculture, who shall make such a demand, shall produce his authority to make such inspection."

A search of court decisions and the opinions of this office reveals that the question you have presented has not been adjudicated or ruled upon in Ohio. Consequently, recourse must be had to the statutes above quoted for the determination of the issue you have raised.

Section 1089-2, *supra*, makes it the duty of the Division of Markets "to act as mediator or arbitrator, when invited, in any controversy or issue that may arise between producers and distributors and which affect the interest of the consumer."

As a general rule, mediation or arbitration contemplates a mutual invitation or consent to such a procedure. If such an invitation has been extended or consent given by all parties concerned, then by virtue of Section 1089-2, *supra*, it would be the duty of the Bureau of Markets to so mediate or arbitrate. If such mutuality of invitation or consent is

lacking, then the Bureau of Markets would have no authority to so mediate or arbitrate.

Section 1089-2, *supra*, further provides that it shall be the duty of the Bureau of Markets "to investigate the cost of production and marketing in all its phases". It will be noted, however, that said section contains no provision with respect to the manner in which such investigation is to be carried on or the methods to be employed in regard thereto and for such reason it would, therefore, appear that the Bureau of Markets may conduct such investigation in any manner that is deemed by it to be proper, to best effectuate the purpose of the law.

Although it is made the duty of the Bureau of Markets "to investigate the cost of production and marketing in all its phases", the carrying out of such duty must necessarily involve a great amount of judgment and discretion as to the manner of investigation. The manner of gathering such information, as hereinbefore stated, rests in the discretion and judgment of the Bureau of Markets. This is necessarily true for the reason that it would be impossible for the Bureau of Markets to investigate the costs of production and marketing of each and every agricultural product in the State of Ohio. Rather, the law contemplated the investigation of the costs of production and marketing of agricultural products generally. Consequently, the question as to whether the Bureau of Markets shall investigate a particular field of agricultural activity upon petition or requests rests in the sound discretion and judgment of the Bureau of Markets.

With regard to this duty, you ask concerning the application of Section 1101, *supra*. It must be borne in mind that the duties and powers of the Bureau of Markets are the duties and powers of the Department of Agriculture, of which said Bureau is a part.

It will be noted that in House Bill No. 72, found in 107 O. L. 429, it was provided in Section 1, (formerly Section 1089-1, General Code) that "the secretary of Agriculture shall establish a bureau of markets and marketing". Section 2 of said Act (Section 1089-2, *supra*) sets forth the duties of said Bureau of Markets. Section 1089-1 General Code, was repealed in 109 O. L. 132.

Section 154-42, General Code, enacted as a part of the Administrative Code and found in 109 O. L. 105, et seq., provides:

"The department of agriculture shall have all powers and perform all duties vested by law in the board of agriculture, the secretary of agriculture, the agriculture advisory board, the division of conservation and in all other bureaus and offices established or authorized by law under the board of agriculture or the secretary of agriculture. Wherever powers are conferred or duties imposed by law upon such board of agriculture or secretary of agriculture, or upon bureaus or offices under either of

them, such powers and duties shall be, excepting as herein provided, construed as vested in and imposed upon the department of agriculture."

Thus, it can be seen that the duties and powers of the Bureau of Markets and the Department of Agriculture must be construed together.

It will be seen that Section 1101, *supra*, provides that the Department of Agriculture has the right, in carrying out the purpose of the laws it is required to administer, to inspect books, accounts, and records of any company, etc., subject to the provisions of such laws. It, therefore, appears that with respect to foodstuffs, it is the duty of the Bureau of Markets to investigate the cost of marketing the same, to its satisfaction. If the Director of Agriculture deems it necessary, in order that said investigation may be properly carried on, to examine the books of any person, company, etc., Section 1101, *supra*, gives him the right to do so.

In view of the above and in specific answer to your inquiry, I am of the opinion that: (1) In the absence of mutual invitation or consent, the Bureau of Markets has no authority to mediate or arbitrate a dispute between producers and distributors; (2) by virtue of Section 1089-2, General Code, it is the duty of the Bureau of Markets to investigate the costs of production and marketing of foodstuffs; (3) in such investigation, the Director of Agriculture is authorized under the provisions of Section 1101, General Code, to examine the books of any person, corporation, etc., subject to the provisions of the laws.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

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LAND FOR FORESTRY PURPOSES—WHERE TOWNSHIP TRUSTEES ACCEPT DONATION—SEWER AND WATER LINE ASSESSMENTS LEVIED—TAX MONEYS MAY BE LEVIED AND COLLECTED TO PAY SUCH SPECIAL ASSESSMENTS—SECTION 5650-1 G. C.—INTERPRETATION WORD "MAINTAIN".

SYLLABUS:

Where the township trustees accept a donation of land suitable for forestry purposes, against which sewer and water line assessments have been levied, such township trustees are authorized to use the tax moneys levied and collected pursuant to the authority of Section 5650-1, General Code, to maintain such forests, to pay said special assessments.