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MILK OR CREAM — “HANDLING” — CONTEMPLATES AND INCLUDES RECEIPT FROM PRODUCERS OR PRODUCERS’ ORGANIZATIONS — TRANSACTIONS BETWEEN DEALERS NOT INCLUDED — SECTION 1080 GENERAL CODE.

SYLLABUS:

The term “handling” as defined in Section 1080, General Code, contemplates and includes the receipt of milk or cream from producers or producers’ organizations only, and does not include transactions between dealers.

Columbus, Ohio, February 28, 1942.

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

Dear Sir:

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

“I am presenting the following question relative to Ohio’s Milk Marketing Law, Section 1080-1080-24, General Code of Ohio for your official opinion.

“Does the term ‘handling’ (as defined in Section 1080, General Code) mean the purchase, receipt on consignment or agency contract from any licensed dealer as well as from the producer or producers organization or is the term ‘handling’ as defined here confined only to receipt of milk and cream from producers or producers organization?”

“Our interpretation of the Law thus far has been that certain dealers in the state who purchase their entire supply of milk from other licensed dealers who are not representing an organization of producers, are exempt from the license features of the Law.

“Our position in this connection has been questioned largely because of the comma following the word ‘purchase’, the one following the word ‘contract’, and also the ‘or’ preceding ‘acquiring’. The attorney who has questioned our stand in this connection has maintained that because of the wording and sentence structure in this paragraph all the dealers regardless of the source of their supply should be licensed under the Act.”

Section 1080, General Code, defines the term “Handling” as follows:

“‘Handling’ shall mean the purchase, receipt on consign-

ment or agency contract, or acquiring of milk or cream from the producer or producers thereof or organizations of producers for the purpose of bottling, selling, processing, jobbing, or distributing the same."

Summarizing your question, you state that the point has been raised that because of the word "or" preceding the word "acquiring" and because there is no comma after the latter word, the language "purchase, receipt on consignment or agency contract" means from any source whatsoever and not just from producers or organizations of producers as referred to later in the paragraph defining the term "handling." This question arises for the reason that under the provisions of the act, only a person who "handles" milk or cream is subject to the licensing provisions of the law.

It is obvious from an examination of the milk marketing law, Sections 1080 to 1080-24, inclusive, General Code, that its primary purpose was to provide certain protection for the producers of milk. This proposition is evidenced by many sections of the law, only a few of which will be cited. The law provides that all milk or cream delivered to or purchased by dealers from producers or cooperative associations must be weighed (Section 1080-4, General Code.) The common pleas court may, upon petition of the director of agriculture, any producers' organization, or any producer, enforce compliance by a dealer of any provision of the act (Section 1080-9, General Code.) Each dealer is required to keep records as to the name of each producer from whom milk or cream is received and, as to each producer, the amounts delivered, butterfat tests, etc., and to furnish to the producer, with each payment for milk or cream, certain data (Section 1080-13, General Code.) In order to provide assurance that milk or cream delivered to him by producers will be paid for, each dealer is required to present evidence of financial responsibility (Section 1080-16, General Code). As stated heretofore, further sections of the act might be cited, but the foregoing are sufficient to show that the primary purpose of the law was to afford protection to producers. Furthermore, many of the sections could have no application to dealers who purchase or receive milk or cream from other dealers only and not from producers or producers' organizations.

It is true that the words "or acquiring of milk or cream from the producers thereof or organizations of producers for the purpose of bottling, selling, processing, jobbing, or distributing the same" are separated from

the matter preceding it by a comma. However, it is obvious that this paragraph must be read in its entirety for it to have any reasonable meaning. For example, the words "milk or cream" appear after the comma, which words obviously, must be read in conjunction with the terms "purchase" and "receipt on consignment or agency contract." Furthermore, the latter terms must be read also in conjunction with "bottling, selling, processing, jobbing, or distributing the same." If this paragraph were not so construed, the consumer of milk or cream would be "handling" such product and would be included within the terms of such paragraph, which construction would be ridiculous and absurd. It is clear, therefore, that the words "purchase" and "receipt on consignment or agency contract" must be read in conjunction with the terms "producer or producers thereof or organizations of producers."

Based on the foregoing propositions, I am of the opinion that the term "handling" as defined in Section 1080, General Code, contemplates and includes the receipt of milk or cream from producers or producers' organizations only, and does not include transactions between dealers.

Respectfully,

THOMAS J. HERBERT  
Attorney General.