

# MAINE STATE LEGISLATURE

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April 15, 1935

The Milk Control Board  
State House  
Augusta, Maine

Gentlemen:

You have requested of this office an opinion as to the effect of the "Act to Create a Milk Control Board" passed as an emergency measure by the present legislature, and signed by the Governor on February 27, 1935, especially as affecting those contracts which had already been entered into prior to the effective date of the Act, where such contract rates are underneath the minimum figure fixed by the Board in any given market area.

It is my opinion that the law is not rendered unconstitutional by virtue of the fact that because of its terms, under which minimum rates are provided in market areas, contracts which had already been entered into are affected. Were such a rule to obtain it is easy to perceive that the police power of the state under which the Act was passed could in practically all instances be rendered nugatory and of no value. The two most recent cases in our Federal Court relating to the matter are Sproles v. Binford, 286 U.S. 374, and Stephenson et al. v. Binford, 287 U.S. 251. In the former case, wherein interstate commerce was in question, the Court remarked:

This court has had frequent occasion to observe that it is not fettered by the necessity of maintaining existing arrangements which would conflict with the execution of its policy as such a restriction would place the regulation of interstate commerce in the hands of private individuals and withdraw from the control of Congress so much of the field as they might choose by prophetic discernment to bring within the range of their agreements.\*\*\*

The same principle applies to state regulations in the exercise of the police power."

In the latter case, the Court said as follows:

"Here the circumstance which justified what otherwise might be an unconstitutional interference with the freedom of private contract is that the contract calls for a service, the performance of which contemplates the use of facilities be-

longing to the state; and it would be strange doctrine which, while recognizing the power of the state to regulate the use itself, would deny its power to regulate the contract so far as it contemplates the use. 'Contracts which relate to the use of the highways must be deemed to have been made in contemplation of the regulatory authority of the state.'\*\*\*

"Nor does it matter that the legislation has the result of modifying or abrogating contracts already in effect. Such contracts are to be regarded as having been made subject to the future exercise of the constitutional power of the state."

Our own court, In Re Guilford Water Company, 118 Me. 372, said:

"The rule is general that every contract touching matters within the police power must be held to have been entered into with the distinct understanding that the continuing supremacy of the state, if exerted for the common good and welfare, can modify the contract when and as the benefit of that interest properly may require."

The above cases cited are recent and, upon analysis, commend themselves as not only logical but common sense. Obviously, if the police power of the state could be thwarted by an individual entering into a contract the supremacy of the state in the field of police power is futile.

Acting under the police power the legislature has enacted the above entitled Act under the terms of which the price of milk from now on is regulated, in so far as the minimum price is concerned, by legislative fiat and, without the exhaustive citation of authorities to support the view which is laid down in the cases above cited, I am clearly of the opinion that the law is not unconstitutional because it may affect existing contracts.

Very truly yours,

CLYDE R. CHAPMAN

Attorney General

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