

# MAINE STATE LEGISLATURE

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July 21, 1960

E. L. Newdick, Commissioner

Agriculture

Frank E. Hancock, Attorney General

Attorney General

**Bonds Required of Purchasers of Farm Products**

We have your letter of July 1, 1960 in which you ask our advice in preparing bills regarding a bonding law to protect our farm people.

You cite the case of a poultry dealer who sold \$12,000 worth of poultry and was paid with rubber checks. You also point out that milk processing plants fold leaving a lot of bad bills. You state that presently a creamery appears to be in the process of folding.

It thus appears that your interest in this respect extends to the farmer and the sale of his several products.

Statutes of the nature you desire, in order to be sustained as valid legislation, must find a reason for their existence in the police power of the State -- that power of a State to preserve and promote the public health, safety, morals, comfort or welfare.

Each person is free, under the Constitutions of the United States and of the State of Maine, to pursue any lawful occupation under equal protection and regulation of the law.

Occasionally, a particular evil so affects a class of people that the legislature may deal particularly with that class under its police power in such a manner that the legislation will not be subject to the fault of "class legislation" which is generally held to be improper; and in this regard it may in some manner burden a particular occupation. However, an evil must exist as to that class as distinguished from a similar evil affecting other classes, before the legislature can pick that class out as being subject to special legislation.

Thus, in State v. Old Tavern Farm, 133 Maine 468, the court held unconstitutional a statute declaring that persons, firms, associations or corporations shall not engage in the business of buying milk or cream within the State from producers, for sale, resale, manufacture or shipment to cities for consumption without annually procuring licenses from the Commissioner of Agriculture and posting bonds to that official -- penalty not less than five hundred, nor more than one hundred thousand dollars, conditioned, among other things, that the licensees will meet obligations arising from the purchase of such dairy products. Deposit with the Commissioner of money, or securities legalized for savings banks, would obviate giving bond.

July 21, 1960

The court could find no evil affecting only producers when selling to gathering stations as distinguished from other vendors of milk. The gathering station itself was subject to the same risks and profits as the producers, as was any other proprietary business.

State v. Lathan, 115 Ms. 176, held unconstitutional a statute which prescribed a fine for non-observance of the provision that certain purchasers of milk or cream should pay producers semi-monthly. The statute was held to afford milk producers and no other creditors, the use of the criminal law in collecting civil obligations and to be in violation of the Fourteenth Amendment to the constitution.

We would point out that the court in deciding the Old Tavern Farm case noted that our act was substantially the same as that considered and upheld by the courts in New York, yet our court struck down such statute.

For the above reasons, it would have to be the opinion of this office that such a statute would be unconstitutional. There would seem to be no reason of which we are aware, and none has been drawn to our attention, which would place farms in any situation vastly, or even markedly, different from that they were in in 1935, date of the Old Tavern Farm case.

We are, therefore, compelled to advise that we have no recommendation or advice to offer with respect to the preparation of such proposed legislation.

We would point out that there is no lack of judicial process for the producer to collect his just debts. Our courts are open to the vendor of farm products as well as to the vendor of clothing and the landlord who provides housing.

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Frank E. Hancock  
Attorney General