

# MAINE STATE LEGISLATURE

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September 24, 1963

Walter B. Steele, Jr.

Maine Milk Commission

Frank E. Hancock, Attorney General

Attorney General

**Legality of Offering Banded Cartons of Milk for Sale at Minimum Gallon Prices.**

**FACTS:**

Under Revised Statutes, Ch. 33, § 3, the Maine Milk Commission may adopt, promulgate and enforce all rules and orders necessary to carry out the provisions of the law.

On July 10, 1963, the Commission's "Findings of Fact" included the following:

- "7. (c) The half-gallon prices shall apply to 2 single quarts banded together, so-called twin-packs or half-gallon containers. The gallon prices shall apply to milk sold in gallon containers only."

At its regular monthly meeting of August 15, 1963, the Commission discussed the matter of licensed dealers requesting permission to band two or more containers to constitute 1 gallon and offer them for sale at the established minimum single gallon prices. It was pointed out, and agreed to by the requesting dealers, that this would be a costly procedure; however, it was understood to be only for such time as necessary for these dealers to obtain the necessary equipment for packaging in the larger sized container.

During the discussion, it was felt that the aforementioned ruling appears somewhat inconsistent, since for some years now, 2 quart packages banded together have been recognized as a half-gallon, and may be priced accordingly. Additionally, there has since been some doubt as to just what legally constitutes a "gallon container" as illustrated by a sealed single container plainly marked "One Gallon" which had 4 individually packaged quarts of milk as its contents.

**QUESTION:**

Based on the aforementioned, may a licensed dealer legally band one or more containers of milk in varying volumes to ultimately obtain a total volume of one gallon, and offer them for sale at the established minimum single gallon prices?

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ANSWER: No.

OPINION:

The answer should be a somewhat qualified "No" in view of the fact that the dealers selling in this manner received permission from the Commission to do so.

7 (c) is clear and unambiguous. It can only be interpreted to mean that to constitute a half-gallon, portions may be used; but to constitute a gallon, one container only must be used.

Any change in this practice could only result by a change in the rule by following the procedure of Chapter 20-A, Administrative Code. This was not done with respect to your August 15th meeting. The Commission's attempt to assist certain dealers was admirable, but where the rule is clear and unambiguous it cannot be extended or amended unless by proper procedure.

Frank E. Hancock  
Attorney General

FEH:H