STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

The second sentence contains a part of the answer. A city or town having more inhabitants than the unit base number is entitled to as many representatives as the number of times the number of its inhabitants fully contains the unit base number. After this the "*remaining* cities, towns and plantations" smaller than the unit base number are grouped into representative class districts. This wording clearly states that the cities and towns entitled to one or more representatives cannot then be grouped with smaller communities into a representative class district.

Question No. 2:

Does the constitutional provision re apportionment (Const. Art. IV, Part First, Sec. 3) prohibit the combination of municipalities which do not contain the county unit base number into a representative district which exceeds the unit base number?

Answer:

No.

Opinion:

Actually section 3 uses the "unit base number" for only one purpose.

> "Each city or town having a number of inhabitants greater than the *unit base number* shall be entitled to as many representatives as the number of times the number of its inhabitants fully contains the *unit base number*;" (Emphasis supplied).

The unit base number is used only to determine what municipalities are entitled to one or more representatives. Once that fact is determined and the number of representatives for such municipalities is determined, the unit base number is no longer used.

In representative class districts there are two limitations. Such districts shall not "contain fewer inhabitants than the largest fraction remaining to any city or town within such county" after determining the representatives to which municipalities having population greater than the unit base number are entitled.

The other limitation is the "grouping whole cities, towns and plantations as equitably as possible with consideration for population and for geographical contiguity."

There is nothing said about the relationship of the unit base number to representative class districts. Hence, a representative class district may have more or less population than indicated by the unit base number.

GEORGE C. WEST
Deputy Attorney General

January 6, 1964

To: Walter B. Steele, Executive Secretary, Maine Milk Commission

Re: Classification Of and Price For Milk Which Has Been Or Which Will Be Transported In Interstate Commerce

Facts:

In recent years, bulk milk traffic has increased both in imports and exports among certain licensed Maine dealers. Historically, this milk has

taken the lower (Class II) classification because of a judgment to the effect that the Commission has no jurisdiction over milk engaged in interstate commerce. Without question, at least a portion of this milk is channeled into Class I or fluid use and would, under normal circumstances, command a higher return to producers. Additionally, dealers have imported milk from foreign markets which has been purported to be for Class I utilization. These imports, as such, displace the Maine dealers' Class I sales by an identical volume as the amount imported and have the effect of diluting the blended prices payable to local Maine producers.

Question:

Whether the Commission may, under the existing statutes, establish the classification and price for milk engaged in interstate commerce?

Answer:

Although the Commission may not burden interstate commerce, it can establish the classification and price of milk which has been or which will be transported in interstate commerce.

Reason:

Your memorandum states that it is the position of the Commission that the facts reported in a Pennsylvania case, *Milk Control Board of the Commonwealth of Pennsylvania v. Eisenberg Farm Products*, 306 U. S. 346 (1939), are parallel to those facts stated above and, therefore, that the Commission can "regulate the price paid to Maine producers for milk purchased in Maine for shipment to any out-of-state market."

In *Milk Control Board v. Eisenberg Farm Products*, supra., the Board conceded (for purposes of the case) that "the purchase, shipment into another state, and sale there of the milk" constituted interstate commerce. The respondent contended that an act which required it to obtain a license, file a bond for the protection of milk producers, and *to pay the farmers the prices prescribed by the Board*, unconstitutionally burdened interstate commerce. The United States Supreme Court held otherwise.

Earlier opinions from this office to the Commission (upon related matters) indicated that the Commission may legally establish the classification and price of milk in Maine notwithstanding the milk has been or will become the subject of interstate commerce. On March 25, 1949, we said that "the Maine State Control Board has authority to enforce its prices for milk sold in open markets when such milk is received at a country plant in intrastate commerce, even though it is subject to the Boston pool which is under the Massachusetts Administrator." We said, on August 31, 1935, that a Maine dealer who purchases milk from a New Hampshire dealer was considered the first handler in Maine and subject to the hundredweight fees. Our opinion dated October 25, 1962 contained the following sentence: "A regulation prohibiting the reduction of the Class I price by a purchase of milk from an out-of-state dealer would not be viewed as an unlawful regulation of interstate commerce."

In *Eisenberg Farm Products* the court recognized that "the activity affected by the regulation is essentially local in Pennsylvania" and that "the Commonwealth does not essay to regulate or to restrain the shipment of the respondent's milk into New York or to regulate its sale or the price at which respondent may sell it in New York." In the present matter the particular

activity is likewise of a local nature having no effect upon what has or what may have occurred elsewhere.

Certainly, the Commission's classification of milk according to its various usages in Maine is a lawful and authorized action even though the milk has, at some time in the past, been in interstate commerce. We thus incorporate our expression quoted in the opinion dated October 25, 1962. The particular usage will most likely occur *after* interstate commerce has come to an end. See: *Hunnewell Trucking v. Johnson*, 157 Me. 338 wherein our Law Court held taxable (sales tax) materials and supplies purchased outside Maine and brought into this State (in interstate commerce) for use upon motor trucks engaged in interstate business.

Directing attention to the exporting of milk by dealers from this state, the Commission is authorized to establish the minimum prices to be paid to producers and dealers in Maine. The statute predicates Commission authority upon the occurrence of acts within the industry in Maine, i. e., "received, purchased, stored, manufactured, processed, sold, distributed or otherwise handled within the State." We thus adopt the principle expressed in *Eisenberg Farm Products.*

Your second and third questions relating to an amendment of the Maine Milk Law for the purpose of authorizing Commission classification and pricing of that milk mentioned in the opinion are rendered moot.

Note:

CASE EXCERPTS

The Shepardizing of *Eisenberg Farm Products* reveals the existence of numerous United States Supreme Court decisions upholding the principle expressed in the Case.

> " . . . State regulation, based on the police power, which does not discriminate against interstate commerce or operate to disrupt its required uniformity, may constitutionally stand." (citing cases) *Huron Cement Co. v. Detroit*, 362 U. S. 440 (1960).
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> "The Commerce Clause gives to the Congress a power over interstate which is both paramount and broad in scope. But due regard for state legislative functions has long required that this power be treated as not exclusive. Cooley v. Port Wardens, 12 How. 299 (1851). It is now well settled that a state may regulate matters of local concern over which federal authority has not been exercised, even though the regulation has some impact on interstate commerce." (citing cases) *Cities Service Co. v. Peerless Co.*, 340 U. S. 179.

See also: *Parker v. Brown*, 317 U. S. 341; *Southern Pacific Co. v. Arizona*, 325 U. S. 761; *Hood & Sons v. Du Mond*, 336 U. S. 525.

Respectfully submitted,

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Assistant Attorney General