

# MAINE STATE LEGISLATURE

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Milk Commission's Access to Records Filed with the Interstate  
Commerce Commission.

**FACTS:**

The Maine Statutes contain the following provision relative to the Maine Milk Commission's examination of certain books and records "relating to milk":

\* \* \* \* In administering this chapter, it shall have power to conduct hearings, subpoenas and examine under oath dealers with their records, books and accounts and any other person from whom information may be desired to carry out the purposes and intent of this chapter and any member of the commission may sign subpoenas and administer oaths to witnesses. Any member of the commission or its representatives may enter at all reasonable hours all places where milk is being received, processed, stored or otherwise handled and shall have access to all books and records relating to milk for the purpose of ascertaining facts to enable the commission to administer this chapter. The commission may adopt, promulgate, and enforce all rules and orders necessary to carry out this chapter." 7 M.R.S.A. § 2951.

The Maine Milk Commission Law also requires that all milk dealers keep certain records. 7 M.R.S.A. § 2956. That reference section (§2956) also contains a further proviso concerning milk dealers' records:

"3. Other records and information. Such other records and information in such form and at such times as the commission may deem necessary for the proper enforcement of this chapter."

There are instances when Maine milk dealers ship milk to and receive milk from points outside the State of Maine; and those transactions constitute an influencing factor in arriving at the

blend prices paid to Maine milk producers. In certain of these instances, the milk dealer, himself, transports the milk, and on other occasions, a common carrier representing the milk dealer performs the transportation service. In order to verify the reference transportation of milk, the Maine Milk Commission wishes to examine the Interstate Commerce Commission reports, otherwise known as log sheets, filed by either the common carrier or the Maine milk dealer. These records would be helpful to the Maine Milk Commission in determining not only the source and destination of milk, but also whether there was, in fact, any physical movement of milk at all.

The Maine Milk Commission has been informed by one milk dealer that the dealer considers his I.C.C. reports to be privileged matter, and not subject to review by the Maine Milk Commission.

QUESTIONS:

1. Whether the Maine Milk Commission may legally compel a Maine milk dealer to produce the dealer's I.C.C. reports "relating to milk" whenever the Commission is involved with an audit of the dealer's accounts?
2. Whether the Maine Milk Commission may legally compel a common carrier to produce its I.C.C. reports located in this State regarding its transportation of milk on behalf of a Maine milk dealer?

ANSWERS:

1. Yes.

2. Yes.

REASON:

The Maine Milk Commission Law seeks to prevent "the disruption of the sale and distribution of milk through unfair, destructive and uneconomic practices." Maine Milk Commission v. Cumberland Farms, 160 Me. 366, 380. The reference case further declares that "the sale and distribution of milk is an industry affected

with a public interest requiring legislation for the preservation of public health and safety." (160 Me. 380) It was decided in Ray et al. v. Parker, (Cal.) 101 P. 2d 665 that the milk industry is sufficiently clothed with a public interest to warrant its regulation by the legislature under the police power. The reference Maine case is in accord with this principle.

The Maine Legislature, in setting forth the powers of the Maine Milk Commission, has decreed that the Commission shall be empowered to examine the "records, books and accounts of milk dealers" (licensed by the Commission). 7 M.R.S.A. § 2953. It appears that the reference Section is sufficiently broad as to encompass copies of log sheets which the milk dealer has filed with the Interstate Commerce Commission evidencing the conveyance of milk. The subject copies would constitute records of the milk dealer which were "related to milk."

Section 2953 of Title 7 also permits representatives of the Maine Milk Commission to enter places (during reasonable hours) where milk is being received, processed, stored or otherwise handled for the purpose of examining books and records kept there "relating to milk". This Section would permit agents of the Commission to examine the books and records of common carriers who received, processed, stored or otherwise handled milk. (It should also be noted that Section 2953 permits the Commission to call "any other person from whom information may be desired" in order to carry out the purpose and intent of the provisions of the Maine Milk Commission Law.)

Recognizing the practicalities, the Commission will first attempt to secure the reference information from the licensed milk dealer before attention is directed to the common carrier's records. If licensed milk dealers have refused the Commission access to I.C.C. reports (in duplicate form) re their transfer of milk, then the Commission might well consider that milk dealers should be required to file similar "log sheets" with the Commission, in a form approved by the Commission. Any such applicable rule or regulation could be promulgated pursuant to 7 M.R.S.A. § 2956, subparagraph 2. Once the existence of such records are required, their examination by agents of the Commission would be undoubted. 7 M.R.S.A. § 2953. Too, such records could be made to encompass not only the dealer's own conveyance of milk, but the dealer's carrier-for-hire as well.

#### REFERENCES:

- (1) Application of Dairymen's League Co-Op. Ass'n., 299 N.Y. 634, 86 N.E. 2d 509 (Court denied contention that records sought by subpoena duces tecum were

not to be examined because they were confidential and were involved with trade secrets.)

- (2) An administrative agency may issue a subpoena duces tecum for the production of any books, papers, or other documents deemed relevant or material to the inquiry. 73 C.J.S., Public Administrative Bodies and Procedure, § 86, footnote #44. 1 Am. Jur. Administrative Law, § 88, footnote #2.

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JWB/eh