

MAINE STATE LEGISLATURE

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J.A.C. JB

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April 25, 1973

Madge E. Ames, Acting Director

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Attorney General

Overtime coverage for Bulk Milk Trucking

SYLLABUS:

The overtime provisions of 26 M.R.S.A. § 664 apply to the business of transporting raw milk in bulk from farm to milk processing plant under contract.

FACTS:

An employer hires a driver to transport raw milk in bulk from farm to milk processing plant on a contract basis. 26 M.R.S.A. § 664 provides that an employee shall not work more than 40 hours in a week unless overtime is paid for all the work done over 40 hours. Section 664 then provides as follows:

"The overtime provision of this section shall not apply to seamen, the canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of herring as sardines, of perishable foods, of agricultural produce, and meat and fish products, nor to the canning of perishable goods, nor to hotels, motels, restaurants and other eating establishments."

QUESTION:

Whether persons employed in the transportation of milk from farm to plant are exempt from the overtime provisions of 26 M.R.S.A. § 664.

ANSWER:

No.

REASON:

Although the grammatical construction of a sentence does not alone control its meaning, nor does the presence or absence of commas, a reading of the above quoted sentence as if there were a comma after the word "distribution", indicates that if the transportation of bulk milk from farm to processing plant is to come within the provisions of the sentence it must be as "processing ...

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of agricultural produce."

There is no definition of the word "processing" in the Milk Commission Law (7 M.R.S.A. ch. 603). References to the word in 7 M.R.S.A. § 2954 and § 2955 indicate that processing is a special treatment of the raw milk in preparation for the market. The only instance referring to processing at the farm is found in 7 M.R.S.A. § 2956, where the phrase "farm-processed into cream for the manufacture of butter" is used.

Definitions appearing in Words & Phrases as found in 34 Words & Phrases under "Processing" clearly indicate that there is no "processing" of a raw product until some change has been made therein. Thus, the pasteurization of milk has been held to be "processing."

Reeves v. Fenley's Model Dairy (Ky) 235 S.W. 2d 995

The mere transportation of raw milk in bulk makes no change in the product, and is not "processing", nor do we believe that it constitutes "packing for shipment or distribution."

It is our opinion therefore that the overtime provisions of section 664 are applicable to the reference transportation of bulk milk from farm to processing plant.

LVWJr./mf

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