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Milk Pricing - Deductions from payments to Farmers,
7 M.F.A. § 295 4

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

December 14, 1977

To: Walter B. Steele, Jr., Executive Secretary, Maine Milk Commission
From: Donald G. Alexander, Deputy Attorney General
Re: Deductions from Producers by Grant's Dairy, Inc., Bangor.

This responds to your memorandum in which you requested an opinion as to whether any legal authority exists for Grant's Dairy, Inc. of Bangor to pass through to producers a service charge imposed on Grant's Dairy, Inc. by Yankee Milk. The service charge is passed through to producers which serve Grant's Dairy who are not members of Yankee Milk.

The facts, as you have presented them, are as follows:

"Producer cooperative Yankee Milk, Inc. has instituted an assessment on dealers having non-Yankee members on their producer payrolls for the surplus milk purchased by Yankee and the Class I sales of milk by Yankee to these various dealers.

"The assessment is in the form of a service charge of \$1.50 per hundredweight on surplus milk purchased by Yankee Milk, and a charge based on the prevailing spot price currently in effect (.85 cwt.) on sales of Class I milk by Yankee. These service charges are assessed on the percentage of non-member producers as it applies to the volumes of Class II milk purchased and Class I milk sold by Yankee.

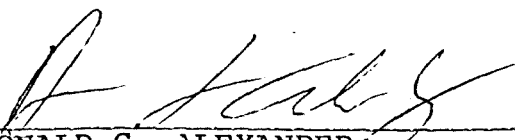
"Grant's Dairy, Bangor has taken it upon itself to retroactively pass back to their non-member producers this additional service charge on transactions with Yankee. The ratio is approximately 40 members - 5 non-members and the deductions from the 5 non-members approach \$1,000 per month. We point out that the deductions from each of these five non-members are

considerably less than what they would be if they were paying membership dues to Yankee milk. Officials at Grant's Dairy indicate that this fact has been pointed out to their 5 non-Yankee producers and they sanction the deductions. There is, however, no formal written agreement between Grant's Dairy and the affected producers in that regard."

The provisions of law governing payments to producers are included in 7 M.R.S.A. § 2954. 7 M.R.S.A. § 2954-2-A specifies that the Maine Milk Commission shall set the minimum prices which dealers shall pay to producers for Class I and Class II milk. These prices are set in the monthly price orders by the Maine Milk Commission. In addition, § 2954-6 authorizes dealers to deduct a transportation allowance from producer payments according to a set schedule of charges filed with the Commission. Other than this deduction for transportation charges, no other deductions are authorized. Therefore I find no statutory authority for the deductions from producer prices undertaken by Grant's Dairy in the facts you have described. Accordingly, the deductions would appear to be improper deviations below the minimum prices required to be paid to producers by the dealer.*

In your memorandum you refer to a recent Supreme Court decision, which I assume is Aboud v. Detroit Board of Education, 97 S.Ct. 1782 (1977). This decision held that public employees, although they may be compelled to support union activities that are specifically related to collective bargaining, may not also be compelled to support other activities such as political or policy activities or legislative advocacy which are not directly related to collective bargaining. I do not think that that case is relevant to the existing matter. Here, there is no compulsory membership and no compulsory support of Yankee Milk. Further, there is no statutory authorization for association or voluntary agreement for association as a result of collective bargaining. Only the Maine milk law governs the relationship of Grant's Dairy to its producers, and the Maine milk law, and price orders published in accordance with it, specify what prices are to be paid producers and what deductions are appropriate.

I hope this information is helpful.


DONALD G. ALEXANDER
Deputy Attorney General

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* This opinion assumes that Grant's Dairy is paying the minimum producer prices.