

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

RICHARD S. COHEN
ATTORNEY GENERAL



79-88
STEPHEN L. DIAMOND
JOHN S. GLEASON
JOHN M. R. PATERSON
ROBERT J. STOLT
DEPUTY ATTORNEYS GENERAL

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

May 2, 1979

Honorable Frank P. Wood
House of Representatives
State House
Augusta, Maine 04333

Re: Maine Milk Commission

Dear Representative Wood:

This letter responds to your two inquiries about the Maine Milk Commission. First, you ask whether the Milk Commission is required by law to regulate the price of milk sold in half-pint containers. We conclude that it is not. Second, you ask whether the statutory exemption for sales of milk to state owned and operated institutions is constitutional when the same privilege is not granted to institutions owned and operated by other governmental units. We conclude that it is.

DISCUSSION

1. Regulation of Half Pints

Section 2954 of the Maine Milk Commission Act, 7 M.R.S.A. §2951, et seq. (the "Act"), provides that:

The commission is vested with the power to establish and change, after investigation and public hearing, the minimum wholesale and retail prices to be paid to producers, dealers and stores for milk received, purchased, stored, manufactured, processed, distributed or otherwise handled within the State.
[Emphasis added]

Pursuant to this authority the Milk Commission has established the minimum prices to be paid to dealers and retail stores for milk sold in quart, half-gallon and gallon containers but not for other container sizes. See Order No. 79-17, effective May 1, 1979.^{1/}

^{1/} Prior to 1976, the Milk Commission had regulated the wholesale (but not retail) prices of half-pint containers. In 1976 the Commission decided not to regulate the sale of half-pints at the wholesale level.

Whether or not the Commission is required to regulate the price of milk sold in all container sizes, including half-pints, is a matter of statutory construction. In this connection, the Maine Supreme Court has ruled that "[i]n construing a statute as being mandatory or directory [i.e., discretionary] the purposes of the statute as well as the language must be considered." Boynton v. Adams, Me., 331 A.2d 370, 372 (1975).

Section 2954 of the Act grants the Commission the "power" to regulate milk prices in all container sizes. This language is generally regarded as permissive, not mandatory. 73 Am.Jur.2d, Statutes, §22 at 281; 82 C.J.S., Statutes, §380 at 882. The purpose of the Act was described in an opinion of this Office dated March 30, 1979, as follows:

The principal purpose of the Act is to "insur[e] . . . an adequate supply of pure and wholesome milk to the inhabitants of the State under varying conditions in various market areas . . ." Section 2954-2 of the Act. Accordingly, the Commission must assess the conditions within any given market, including its size and economic importance and the economics and practices of the milk industry within the market. The market should be designated as controlled if these conditions are such that in the opinion of the Commission, unfair, destructive, or uneconomic practices in that and other similar markets could have the effect of jeopardizing an adequate supply of pure and wholesome milk to the inhabitants of the State.

In our opinion, a determination by the Commission that market conditions are such that the regulation of half-pints is unnecessary to insure an adequate supply of pure and wholesome milk is entirely consistent not only with the language but also the purposes of the Act.

Finally, it is significant to note that Act has been amended on several occasions over a period of time when the Commission has not regulated retail sales of half-pints. It is reasonable to assume, under these circumstances, that if the Legislature had intended to require the Commission to regulate half-pints it would have expressly provided therefor. See, 2A Sutherland, Statutes and Statutory Construction, §49.09 (4d ed. 1973)

For the foregoing reasons, we conclude that the Commission is not required to regulate the sale of milk in half-pint containers.

2. The Exemption For State Owned and Operated Institutions

Section 2954(5) of the Act provides that no dealer, store, or "other person" handling milk shall buy milk for prices less than the scheduled minimum prices. The term "person" is defined by

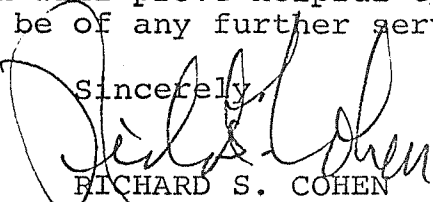
Section 2951(7) of the Act to include "the State and all political subdivisions or agencies thereof, except state owned and operated institutions." [Emphasis added]. Accordingly, the minimum prices established by the Commission apply to sales to such local institutions as public schools but not to such state institutions as state mental health institutes, youth centers, correctional institutes and prisons, schools for the deaf and vocational technical institutes.

The statutory exception for state owned and operated institutions was created in 1957 when the Act was expanded to generally include regulation of milk sales of the State and its political subdivisions and agencies. P.L. 1957, Chapter 384, sec. 4. The legislative history of the 1957 amendment does not explain the reason for the exception. Presumably the Legislature concluded that it would enable the State to achieve savings in the operation of its institutions through purchases of milk at lower prices than those generally established, without jeopardizing the overall regulatory objectives of the Act.

If there is any constitutional infirmity with a statutory exception which treats state and locally owned and operated institutions differently, it would be found in the Equal Protection Clauses of Art. I, §6-A of the Maine Constitution^{2/} and the Fourteenth Amendment of the United States Constitution.^{3/} However, it has long been the view of the federal courts that political subdivisions of a State, being mere agencies of the State, have no rights under the Equal Protection Clause of the Fourteenth Amendment against their creator. See, Williams v. Mayor & City Council, 289 U.S. 36, 40 (1933) and cases cited therein; Township of River Vale v. Town of Orangetown, 403 F.2d 684, 686 (2d. Cir. 1968); Triplett v. Tiemann, 302 F.Supp. 1239, 1242 (D. Neb. 1969); Northwestern School District v. Pittenger, 397 F.Supp. 975, 979 (W.D. Pa. 1975); and San Diego Unified Port Distr. v. Gianturco, 457 F.Supp. 283, 290 (S.D. Cal. 1978). We have no reason to believe that the Maine Supreme Court would reach a different conclusion under Act. I, §6-A of the Maine Constitution. See, the opinion of this Office dated April 26, 1979.

I hope the above information will prove helpful to you. Please feel free to contact me if I can be of any further service.

Sincerely,


RICHARD S. COHEN
Attorney General

RSC:jg

^{2/} "No person shall . . . be denied the equal protection of the laws."

^{3/} "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."