

AGRICULTURE: Section 29, page 202, Laws of Missouri,  
1939, prohibits cream buyers from paying  
DAIRY PRODUCTS: a bonus or premium in addition to the  
posted price; Commissioner of Agriculture  
may promulgate reasonable rules consistent  
with the dairy products act.

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December 5, 1940

Mr. Edward Cusick  
Prosecuting Attorney  
Pulaski County  
Waynesville, Missouri



Dear Sir:

This is in reply to yours of November 28, wherein  
you request an opinion on the following statement of  
facts:

"Section 29 of House Bill 232, Laws  
of Missouri for 1939, page 202, pro-  
vides that it shall be unlawful to  
pay less than the posted prices for  
cream purchased on a butterfat basis,  
which prices shall include all premi-  
ums and bonuses, if any.

- "1. Does this statute prohibit such  
cream buyers from paying more  
than the posted price, that is  
does it prohibit such cream  
buyers from paying a bonus or  
premium in addition to the  
posted price?
- "2. Does any other statute of the  
state prohibit such cream buyer  
from paying a premium or bonus  
in addition to the posted price?
- "3. Does the Commissioner of Agricul-  
ture have power by rules and regu-

lations to prohibit such cream buyer from paying a premium or bonus in addition to the posted price?"

In order that your question may be more fully discussed, we herein quote the entire section 29 of the Dairy Products Act for the year 1939 as found in Laws of Missouri, 1939, at page 202. This section reads as follows:

"At each licensed place of business where cream is purchased on a butter-fat basis for butter-manufacturing purposes, the delivered prices being offered and paid to milk producers for the different grades upon that day shall be publicly posted in a conspicuous location at each place where cream and butterfat is purchased on grades for said purposes in Missouri, such posting to be made in clear and distinct letters and figures not less than two (2) inches in height, showing the prices per pound of butterfat for the different grades purchased at such place, and it shall be unlawful to pay less than the posted prices, which prices shall include all premiums and bonuses, if any; provided, that nothing in this section shall be construed as to forbid or prevent (a) incorporated co-operative associations from paying annually earned patronage dividends according to the statutes and decrees under which they are organized or (b) corporations paying annual dividends according to the statutes and decrees under which they are incorporated."

The provisions of this section as to the cream buyer paying a bonus or premium in addition to the posted price are very plain and unambiguous. There is no need, or authority, for any construction of this statute since its

language is not ambiguous. In the case of State ex rel. Cobb v. Thompson, 5 S. W. (2d) 57, l. c. 59, the court announced the rule where a construction of a statute was permissible, in the following language:

"A statute is not to be read as if open to construction as a matter of course. It is only in the case of ambiguous statutes of uncertain meaning that the rules of construction can have any application. Where the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself."

Citing cases.

Since said Section 29 provides that the posted price for cream purchased on a butterfat basis shall include all premiums and bonuses, then the cream buyer would be violating the provisions of the act if he paid a bonus or premium in addition to the posted price.

Answering your first question then, it is the opinion of this department that cream buyers are prohibited from paying more than the posted price. In other words, they would not be authorized to pay a bonus or premium in addition to the posted price which they are required to post for the price for cream.

Answering your second question will say that in our research on this question we do not find any other statute which would prohibit such cream buyer from paying a premium or bonus in addition to the posted price.

Answering your third question, Section 8 at page 194, of the dairy products act, Laws of Missouri 1939, provides as follows:

"The Commissioner is hereby authorized to prescribe and promulgate such reasonable regulations (not contrary to the

purposes of this act) as are necessary to properly enforce this act."

Under this section the dairy commissioner would be authorized to prescribe and promulgate any reasonable regulation necessary to properly enforce the provisions of said section 29 provided such regulations are not contrary to the purposes of said act. The language of this section is plain and unambiguous and needs no construction for the same reasons announced in State ex rel. Cobb v. Thompson, supra.

CONCLUSION.

Therefore, it is the opinion of this department that the Commissioner of Agriculture, under the provisions of said Section 8, of the Dairy Products Act of 1939, may prescribe and promulgate such reasonable regulations as are necessary to enforce the provisions of Section 29 of said Act pertaining to the prohibition of a cream buyer from paying a premium or bonus in addition to the posted price.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney-General

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APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney-General