

**OPINION
62-79**

May 22, 1962 (OPINION)

DAIRY PRODUCTS

RE: Cream Buyers - Posting of Prices

This is in reply to your letter of May 18, 1962, concerning section 4-18-16 of the North Dakota Century Code. You ask our opinion with reference to the posting of the price being paid for butterfat under the provisions of the above section.

You state that many of the cream buyers dispute the fact they have to post the price. Others post their price so it is not readable from the street due to being posted in a second story window or side window of the building. Your department contends that the price should be posted so it can be clearly read from the street, which you consider to mean near the receiving door and window where the cream is delivered.

You also ask our opinion as to the price of the cream to be purchased in that there are cases where the buyers pay only one price which is for sweet cream or number one sour. You also ask what authority you have and the penalty that can be imposed in those instances where the statutes have been violated.

In regard to your first question, section 4-18-16 of the North Dakota Century Code provides:

PURCHASES OF CREAM - PRICES OF GRADES TO BE KEPT POSTED. All purchases of cream shall be on the basis of the grades defined in section 4-18-15. Every person, firm, or corporation owning, purchasing or managing a creamery, cream station, or other butterfat purchasing establishment in this state where butterfat is purchased, shall post the prices being offered for butterfat at such station. If any different price is being offered at any other butterfat purchasing establishment owned, operated, or controlled by the same person, firm or corporation within one hundred miles, there also shall be posted at the same place the amount of each different price being offered on the same day at such other places. If a different price is being paid at any one butterfat purchasing establishment within a radius of one hundred miles owned, operated, or controlled by the same person, firm or corporation for butterfat shipped directly, than is being offered for butterfat delivered at such point, both a direct shipment and delivered price must be so posted. All such prices shall be posted in a place where they can be clearly seen from the street. A price different from that so posted for any given town or cream buying establishment shall not be paid for such products. All purchasers of cream and butterfat shall maintain a reasonable price differential for such grades and at no time shall this differential be less than one cent per butterfat pound between grades." (Emphasis supplied.)

Section 4-18-15 of the North Dakota Century Code sets forth the various grades of cream and butterfat. They are sweet cream, grade one, grade two, and unlawful cream.

You will not the above quoted statute requires prices being offered for butterfat to be posted in a place where they can be clearly seen from the street. It is our opinion that such prices must, therefore, be posted so they may be seen and read from the street by the ordinary person. Whether such prices are posted so they can be clearly seen and read from the street by an ordinary person is a question of fact. It would appear that the most logical place to post the prices would be near the receiving door and window where the cream is delivered. However, they may be posted in some other place if the statute is complied with.

In regard to your second question, section 4-18-16 of the North Dakota Century Code provides that purchases of cream shall be on the basis of the grades defined in section 4-18-15, and that purchasers of cream and butterfat shall maintain a reasonable price differential for such grades which shall at no time be less than one cent per butterfat pound between grades. The statute in this respect is definite and requires a price differential between grades. Presumably a cream buyer could, if he desires, post only one price for one grade of cream. However, such buyer would be permitted to purchase only the grade of cream for which he had the price posted. If he attempted to purchase other grades of cream at that price he would, in our opinion, be in violation of the law. It is our further opinion that a cream buyer who posts different prices for different grades of cream, in accordance with the statute, but pays only on price for all grades of cream would also be in violation of the statute.

Insofar as the enforcement of the above statute is concerned, section 4-18-23 of the N.D.C.C. provides the dairy commissioner may make an official test of the percentage of butterfat if a dispute over the test arises. Section 4-18-27 of the N.D.C.C. provides that any unreasonable variation between an official test made by the dairy commissioner, his deputy, or his agent, and any test made by any licensed cream tester in this state shall be cause for the revocation of, or refusal to reissue a license.

The specific penalty for violation of section 4-18-16 would appear to be section 4-18-53 of the N.D.C.C. which provides:

PENALTY FOR VIOLATION OF CHAPTER. Any person violating any of the provisions of this chapter for which another penalty is not specifically provided is guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment. Upon conviction for a first offense, the license of the person, corporation, association, or partnership so convicted shall be suspended for thirty days, and such license shall be revoked upon a conviction for a second offense."

This section would apply to those situations in which the prices were not properly posted as required by section 4-18-16 and to those situations in which the prices paid for different grades of cream were not in accordance with the price differential prescribed by section 4-18-16. You or your agents or deputies would be entitled to sign a complaint charging such violations.

Under the provisions of section 4-18-54, it is not necessary to secure the endorsement of the state's attorney to a complaint made for a violation of the provisions of chapter 4-18. However, we would suggest the person making the complaint contact the state's attorney of the county in which the violation has occurred in order to assure the proper procedure for prosecution of such violations.

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Attorney General