

OPINION
62-94

August 23, 1962 (OPINION)

DAIRY PRODUCTS

RE: Use of Sales Devices When Purchasing From Producers

This is in reply to your letter of August 16, 1962, in which you ask several questions concerning the use of trading stamps, premiums, coupons and other sales devices on the purchase of milk or cream from the producer. Your questions are as follows:

1. Is it lawful to give trading stamps to the producer when purchasing milk or cream?"
2. Is it lawful to give coupons, which are redeemable for cash or merchandise, when purchasing milk or cream from the producer?"
3. Is it lawful for the purchaser to give away premiums (such as toy balloons, ice cream scoops, dishware, and so forth) when purchasing milk or cream from the producer?"
4. Is it lawful to have drawings daily, weekly, or at other periods of time, where a present is given to the name drawn from a list of patrons who supply milk or cream to the purchaser?"

You further state that in all cases pertaining to the above questions, you are assuming the value of the stamps, premiums, coupons and so forth, plus the actual cash price paid to the producers is less than the value of the purchased milk or cream is to the producer. You then ask, should the combined value of the cash price paid to the producer and the value of the stamps, coupons, premiums, and so forth be more than the actual value of the milk and cream to the purchaser, if it would change the opinion given on any of the previous questions.

With regard to your first two questions, we must consider the provisions of section 4-18-16 of the North Dakota Century Code, which govern the purchases of cream and provides, in part, that the cream price in any given town or cream buying station must be posted, and further provides that a price different from that so posted for any given town or cream buying establishment shall not be paid for such products. Trading stamps must be redeemable in cash as well as merchandise. See section 51-06-01 of the North Dakota Century Code. If, therefore, the stamps and coupons are redeemable for cash it would appear to us that the purchaser of cream who gives stamps and coupons redeemable for cash or merchandise to the producer of such cream would, in effect, be paying a higher price for such cream than that which is required to be posted. Since the payment of a higher price for cream than that posted is prohibited by section 4-18-16 of the North Dakota Century Code, it is our opinion that it is not

lawful to give trading stamps or coupons which are redeemable for cash in the purchase of cream.

Insofar as the use of trading stamps or coupons redeemable in cash in the purchase of milk is concerned, this would appear to be governed by the provisions of Chapter 4-14 of the North Dakota Century Code concerning unfair discrimination in the purchase of farm products.

Section 4-14-02 of this chapter provides:

Any person engaged in the business of buying farm products for manufacture or sale who shall discriminate between different sections, localities, communities, cities, or villages of this state, by purchasing farm products at a higher price or rate in one locality than is paid for such products of the same kind, quality, and grade by such person in another section, locality, community, city, or village, or than is paid to another person of the same community, after making due allowance for the difference, if any, in the actual cost of transportation paid from the locality of purchase to the locality of manufacture or sale, is guilty of unfair discrimination. It shall not be unfair discrimination for any person to pay in any section, locality, community, city, or village a price equal to that actually paid on the same day by any bona fide competitor in such section or locality for farm products of the same kind and grade if such price is paid in a bona fide and good faith effort to meet competition, and in such case, the burden of proving such facts shall be upon the defendant."

In view of the fact that stamps and coupons redeemable in cash would, in effect, alter the price paid to the producer for milk, it is our opinion that such stamps or coupons could be offered to the producer by the purchaser only if such offer were made to all producers from whom purchases are made by such purchaser or in bona fide attempt to meet competition in a trade territory.

With regard to your third question, we can find no statute which would prohibit the purchaser from giving away premiums (such as toy balloons, ice cream scoops, dishware and so forth) when purchasing milk or cream from the producer. It is, therefore, our opinion that such practice is not prohibited by the laws of this state.

Insofar as your fourth question is concerned, there is nothing in the laws governing the purchase of dairy products which would prohibit drawing at certain periods of time wherein a present is given to the name drawn from a list of the patrons who supply milk or cream to the purchaser. However, we do believe such practice would, under certain conditions, violate the provisions of Chapter 12-24 of the North Dakota Century Code. Chapter 12-24 concerns lotteries and forbids same in this state. One of the elements of a lottery is valuable consideration. Since the consideration in this instance would be the sale of milk to the purchaser who conducts the drawings, it is our opinion such practice is prohibited.

The answers to the above questions would not be substantially different should the combined value of the cash price paid to the producer and the value of the stamps, coupons, premiums be more than

the actual value of the milk and cream to the producer.

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