

OPINION
65-1

December 11, 1965 (OPINION)

Mr. John E. Schick

Dairy Commissioner

RE: Agriculture - Dairy bonds - Persons Covered

This is in reply to your letter dated December 9, 1965, wherein you referred us to section 4-30-03 of the North Dakota Century Code, as amended, which provides for the bonding of purchasers of dairy products.

With reference to the above mentioned section you asked the following question: "Specifically, who does the bond protect; only 'dairy producers' or all persons who sell milk or cream to a licensed milk or cream purchaser? Thus, could one who is not a 'dairy producer' but who has sold milk or cream to a licensed creamery etc., make a valid claim against the bond of said licensed creamery, etc.?"

Section 4-30-03 of the North Dakota Century Code, as amended, provides as follows:

BONDING OF PURCHASERS OF DAIRY PRODUCTS. Each applicant for license under section 4-30-02, who purchases milk or cream from a dairy producer shall file with his application for license a surety bond or certified bank draft held in favor of the dairy department, to an amount equal to the average weekly purchases of such milk or cream bought from dairy producers during the previous year, or if such a determination is impossible or unavailable, the amount required shall be determined by the dairy commissioner, provided that, in such a case, no amount less than \$1,000 shall be accepted. The commissioner shall be named as obligee, but the bond or draft shall be held for the purpose of protecting, and for the benefit of, any dairy producer and the full and complete payment to the seller for all milk or cream purchased by the licensee; * * *."
(Emphasis supplied.)

The statutes do not define "dairy producer"; however, section 4-30-01 of the North Dakota Century Code, as amended, includes the following:

DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires:

* * *

6. 'Producer dairy' shall mean a dairy farm which sells milk or cream to a dairy plant for processing or manufacturing;
7. 'Milk producer' shall mean a person who owns or controls one or more cows, a part of all of the milk or milk products from which is sold, or offered for sale;

8. 'Dairy or dairy farm' shall mean a place where one or more cows are kept, a part of all of the milk or milk products from which is sold or offered for sale;

* * *

On the basis of these definitions it seems clear that "dairy producer" would only include persons owning or controlling cows in commercial production.

It is our opinion that only "dairy producers" are protected by the bonding provisions of section 4-30-03. The phrase "and the full and complete payment to the seller for all milk or cream purchased by the licensee" does not create another class of claimants but refers back to "dairy producer." To construe this section to read that all persons who sold milk or cream to a licensee are covered by the bond one would have to say that the words "dairy producer" are surplusage, unless one is also willing to say that a "dairy producer" could claim under the bond for any transactions he may have had with the licensee. This was obviously not the intent of the legislature; the words "milk and cream" are used three times in the section and it is clear that milk and cream transactions are the only ones with which the statute is concerned.

It should be noted that only those applicants who do business with "dairy producers" are required to secure a bond and that the size of the bond itself is conditioned on the amount of purchases made from "dairy producers." These factors in themselves indicate that the bond requirement is solely for their benefit.

HELGI JOHANNESON

Attorney General