

**OPINION
51-196**

April 17, 1951 (OPINION)

UNFAIR TRADE

RE: Not Illegal to Prefer One Distributor

You ask the opinion of our office as to whether the practice hereinafter described is in violation of any law of this state. This practice relates to two milk plants which you designate as plants "A" and "B." You state that plant "A" was informed by one of his wholesale outlets that his competitor, plant "B", was giving a discount below the regularly scheduled wholesale price on their pasteurized milk.

The question then is this: May one wholesaler of milk give a discount to one distributor without giving the same discount to all other distributors of his products? We assume that these distributors do business in the same locality, as in the same city, or in the same village.

Chapter 4-14 N.D.R.C. 1943 seems to relate to and prevent discrimination in the handling of farm products, including butter, milk, cream, butter fat, and cheese, as well as other farm products.

Section 4-1404 relates to the sale of farm products. However, its application is limited strictly to sales made by any person who, "with the intention of creating a monopoly or of destroying the business of a competitor, or of any regularly established dealer, or to prevent the competition of any person who in good faith intends and attempts to become such a dealer, discriminates between different sections, communities, cities, or villages, or portions thereof in this state, by selling at a lower price or rate in one section, community, city, or village, or portion thereof than is charged by such person for such farm products in another section, community, city, or village, or portion thereof, * * * is guilty of unfair discrimination."

Clearly, this does not prevent a wholesaler of farm products from giving a discount to one distributor without giving a like discount to all who distribute his product in the same locality. He may not discriminate between sections, but there is no prohibition of discrimination between his distributors operating in the same locality.

This is a penal statute and it may not be broadened by construction to cover practices not specifically prohibited.

We have examined all other phases of our law relating to unfair trade practices and find nothing relating to the practice here involved. Therefore, we are of the opinion that there is nothing illegal in the practice you specify.

ELMO T. CHRISTIANSON

Attorney General