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Milk Price Control - A Developing Field of Administrative Law

Frank E. Coho

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As the urban population of the United States has become increasingly concentrated, the sanitation laws relating to the production and handling of milk have become more and more stringent. Dairy farmers have become less and less able to meet these laws and have had to rely upon milk dealers or handlers to process milk and distribute it to consumers. Although it has been suggested that milk price control laws have been substituted for sanitary regulations, the strict laws of milk sanitation have been one of the causes for enacting milk price control statutes.

Sanitation laws aided the growth of the milk handling industry. Individual producers could not afford the machinery and equipment for pasteurization and sanitary bottling and delivery. Milk not distributed in fluid form is manufactured into food products that require additional expensive machinery and equipment for uniform products of high quality. The growth of the business of handling milk was accompanied by changes in methods of paying producers for milk that also led to the enactment of price control statutes. Farmers first sold their milk to dealers by volume. Because volume was not accurately measured by milk cans, which varied in content as they became dinged from use, milk was measured by weight. The butterfat content of milk varies with breeds of cattle and with individual cattle of a particular breed. It varies with any individual cow according to her physical condition, feeding and care. This is likewise true of goats and
other dairy animals, although at the present time only the milk of cows is practically affected by milk price control statutes. Producers are generally paid for milk today according to its weight and butterfat content. In addition, the amount paid for milk is largely governed by the use to which it is put.

Milk not distributed in fluid form is often referred to as "surplus" milk. It is generally used for manufacturing food products, such as ice cream, butter, cheese and milk chocolate. Insofar as it is not used as a beverage or for household consumption it is surplus milk, but at least part of the surplus is necessary to maintain an adequate supply of milk at all times and all the surplus is utilized in some way.

Milk used for fluid purposes is paid for at a certain amount per hundred-weight of a given butterfat content, commensurate with high sanitation standards and constant supply. Milk used in food products is paid for according to the market value of the products. The depression in prices for food products during the early 1930's caused farmers formerly supplying manufacturing dealers to turn to the fluid milk markets for better prices. Competition for the fluid milk markets became very keen. Dairy farmers found themselves in a dilemma. If they continued to produce milk, competition with other farmers made their returns inadequate. If they abandoned farming equally serious results threatened, for milk cattle had little value as meat and milk equipment and supplies could not be used elsewhere.

Beginning with the first New York milk control law, effective May 17, 1933, attempts were made to remedy the economic difficulties of the milk industry by several states and by the United States. By 1940 half the states had at some time enacted milk price control legislation. On January 1, 1941, eighteen of these states had effective milk price statutes in operation. The Ohio statute, passed

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in 1933, expired in 1935 and was never extended or replaced. The Michigan Act became inoperative when it was found that the provision creating the Milk Marketing Board was unconstitutionally discriminatory against distributors.\textsuperscript{12} The Utah Act failed for lack of adequate standards for the fixing of prices.\textsuperscript{18} The Maryland Act earlier met the same fate.\textsuperscript{14} Washington's first milk control law, passed in 1933, fell for the same reason,\textsuperscript{16} and when an intended curative act of 1935 was found similarly defective,\textsuperscript{18} the Washington legislature ceased trying to enact a valid control statute and relied upon the Oregon and California acts for incidental aid. The Louisiana statute\textsuperscript{17} is still on the books, but the powers of the Louisiana Milk Commission to fix minimum prices being described only as "the right to make such regulations as will protect the production of milk in the quality and price of milk to be sold by them \textit{[i.e., producers]} to distributors, pasteurizers and other wholesalers,"\textsuperscript{18} and the Supreme Court of Louisiana having shown that it will not read into this act any missing part,\textsuperscript{19} it seems clear that necessary standards and fact-determining procedure for valid price-fixing are missing. In addition to the milk control laws referred to above, it should be noted

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that the Missouri Dairy Law and a similar Kansas statute\(^2\) provide for the posting of prices to be paid for cream at receiving plants and provide minimum price differentials for various grades of cream. Under such statutes the posted price is the only lawful price to be paid producers; it is both a maximum and a minimum price.\(^2\)

Because the state of destination cannot control minimum prices to be paid producers in the state of origin of milk sold there and moved in interstate commerce,\(^2\) Congress empowered the Secretary of Agriculture of the United States to regulate minimum prices to be paid producers for milk marketed in interstate commerce.\(^2\) Under this statute, the Secretary of Agriculture has promulgated price orders in a number of markets receiving part or all of their milk from other states. Valid federal orders are to be found in Boston, Massachusetts;\(^2\) New York, New York;\(^2\) Dubuque, Iowa;\(^2\) Sioux City, Iowa\(^2\) and a number of other metropolitan areas.

The highest state court has sustained the state milk price control law in Alabama,\(^2\) California,\(^2\) Florida,\(^2\) Georgia,\(^2\) Indiana,\(^2\) Massachusetts,\(^2\) New

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\(^{21}\)Limpp v. Dodge, 146 Kans. 948, 73 Pac. (2d) 1001 (1937).


\(^{27}\)Ex parte Willing, 12 Cal. (2d) 591, 86 Pac. (2d) 663 (1939); Jersey Maid Milk Products Co. v. Brock, 13 Cal. (2d) 620, 91 Pac. (2d) 577 (1939); Ray v. Parker, 15 Cal. (2d) 275, 101 Pac. (2d) 665 (1940).

\(^{28}\)Miami Home Milk Producers Association v. Milk Control Board, 124 Fla. 797, 169 So. 541 (1936); Milk Commission v. Dade County Dairies, Inc., ...., Fla. ...., 200 So. 83 (1940); Alderman v. Puritan Dairy, ...., Fla. ...., 1 So. (2d) 177 (1941).

\(^{29}\)Gibbs v. Milk Control Board of Georgia, 185 Ga. 844, 196 S. E. 791 (1938); Bohannon v. Duncan, 185 Ga. 840, 196 S. E. 897 (1938); Holcombe v. Georgia Milk Producers Confederation, 188 Ga. 358, 3 S. E. (2d) 705 (1939).

\(^{30}\)Albert v. Milk Control Board, 210 Ind. 285, 200 N.E. 688 (1936); Phend v. Milk Control Board of Indiana, 213 Ind. 359, 12 N. E. (2d) 114 (1938); Milk Control Board v. Crescent Creamery, Inc., 214 Ind. 240, 14 N. E. (2d) 588, 15 N. E. (2d) 80 (1938).

Hampshire,34 New Jersey,35 New York,36 Oregon,37 Pennsylvania,38 Vermont,39 Virginia40 and Wisconsin.41 The Connecticut statute is overshadowed by a decision holding its 1935 predecessor invalid because of a delegation of unconfined legislative power.42 The Maine,43 Montana and Rhode Island statutes have apparently avoided destructive litigation.

State milk control legislation has been recognized as within the scope of the state police power by the Supreme Court of the United States, because "upon proper occasion and by appropriate measures the state may regulate a business in any of its aspects, including the prices to be charged for the products or commodities it sells."44 United States milk control legislation, providing for fixing minimum prices to be paid producers for milk handled in interstate commerce, was sustained because: "The authority of the Federal government over interstate commerce does not differ in extent or character from that retained by the states over intrastate commerce."45

The several milk price control laws have many features in common. They generally provide for the licensing of milk dealers or handlers, the fixing of minimum prices to be paid producers, the filing of reports by milk dealers to assure payment of the required prices, and the furnishing of bonds by milk dealers to assure proper payments to producers.

Each act begins with the declaration of its policy and some or all of the standards by which the administrative board or officer is to promulgate orders.

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37State ex rel. Van Winkle v. Farmers Union Cooperative Creamery, 160 Ore. 205, 84 Pac. (2d) 471 (1938); Savage v. Martin, 161 Ore. 660, 91 Pac. (2d) 273 (1939).
41State v. Dairy Distributors, Inc., 217 Wis. 167, 258 N. W. 386 (1935); State ex rel. Finnegan v. Lincoln Dairy Co., 221 Wis. 1, 265 N. W. 197 (1936).
Most of the declarations of policy are primarily concerned with maintaining an adequate supply of pure and wholesome milk for the public, although the stabilization of the dairy industry is also to be achieved. Sometimes the stabilization of the dairy industry appears of prime importance. The federal act has as its purpose, "to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period" and to "protect the interest of the consumer" by establishing such prices and refraining from enforcing higher prices. So far these differences in purpose have not occasioned noticeable differences in minimum price orders. In those areas where concurrent state and federal orders are in effect, it is possible that the facts adduced at a joint hearing may require certain minimum prices to maintain an adequate supply of pure and wholesome milk at all times that will not be the same as those required to provide farmers whose milk affects interstate commerce with the required purchasing power.

In order to at least partly defray the expense of administering milk price control laws, license fees are charged milk dealers or handlers in accordance with the amount of milk handled. Such fees are not collected under the federal act. A great deal of milk is shipped in interstate commerce. The state of origin can require a license fee of a dealer or handler selling milk to be shipped in interstate commerce. While the state of destination cannot require a license fee of milk dealers who buy their milk in other states because of such purchases, since other sales and handling take place in the state of destination it seems that the state of destination can require the payment of license fees based upon such sales and handling.

The most important parts of the milk control laws are their price-fixing provisions. All the milk price control acts (referred to above in notes 11 and 23)

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47See, for example, the Indiana statute, note 46 above, and section 301 of the Pennsylvania Milk Control Law, 31 PS section 700j-301.
provide for the fixing of minimum prices to be paid producers for milk. The first acts provided for both minimum prices to be paid to producers by milk dealers and minimum (and sometimes maximum) wholesale and retail prices to be charged or received by milk dealers from consumers. The theory of fixing both dealer and producer prices has been that in order to assure proper payments to producers the amount received by dealers must be sufficient to make those payments. Most of the state statutes provide for the fixing of both dealer and producer prices. The federal statute provides only for the fixing of minimum prices to be paid producers. Difficulties in enforcing prices to be charged by milk dealers and the question of the reasonableness and adequacy of the spread between producer and dealer prices have led some states to change their acts so as to provide only for the fixing of minimum prices to be paid producers.

Along with the price-fixing provisions of the milk control laws go the sections relating to the state-supervised weighing and testing of milk for butterfat. Since most milk is paid for by weight and butterfat content, minimum prices can be avoided by the unscrupulous as much by manipulating tests and changing weights as by not paying the required prices.

It is in the matter of fixing minimum prices that the administrative procedure and the substantive law of milk price control have a wide field for development. The factors to be considered in determining what minimum prices must be paid producers to accomplish the purpose of the control act require full consideration of the administrative board or officer and the taking of relevant testimony. Where minimum prices to be charged or received by milk dealers are also fixed, not only must the price to be paid producers be established, but in addition facts must be developed to show what will be a reasonable minimum price for the milk dealer on the basis of the minimum prices to be paid producers and the necessary costs of handling. Because of the birth of milk price control during a period of economic depression, attempts to fix maximum prices to be charged or received

54See, for example, sections 802 and 803 of the Pennsylvania Milk Control Law of April 28, 1937, P. L. 417, 445-446, 31 PS sections 700j-802 and 700j-803.
56See, for example, Article VI of the Pennsylvania Milk Control Law of April 28, 1937, P. L. 417, 31 PS section 700j-601 et seq., taken from the Act of May 6, 1925, P. L. 541, as amended by the Act of May 31, 1933, P. L. 1126.
57Colteryahn Sanitary Dairy v. Milk Control Commission, 332 Pa. 15, 21, 1 A. (2d) 775 (1938). For a discussion of many of the problems that confront the administrative board or officer in fixing minimum prices to be charged or received by milk dealers, see Robert H. Griswold, The "Rate Base" in Milk Control, 45 Dickinson Law Review 135 (1941).
by milk dealers have not been made. If and when they are, there will be a problem of determining how much higher the maximum prices allowed should be over minimum prices established under the same circumstances.

Whether a hearing is a necessary proceeding preliminary to the issuance of a price-fixing order is not entirely clear. Most acts require a hearing to be held, and the hearing has become a customary part of the price-fixing procedure. It seems that whether or not a hearing is requisite depends in large measure upon whether there is a method provided in the act to question the reasonableness of the price-fixing order itself. Since the milk dealer handles milk day in and day out and his livelihood depends upon obtaining a return for his services, he must be afforded some means of contesting an order that is unreasonable. A hearing is desirable for this reason. Adequate notice of the order itself with an opportunity to contest the validity of the order by appeal or injunction suit and the taking of testimony in either case to show the invalidity of the order would seem to satisfy the requirements of due process. Since appellate courts sometimes do not have adequate facilities for taking testimony and the likelihood of an order being set aside is greater if the order is issued before testimony is adduced, there is little likelihood of price-fixing orders being issued without a hearing. Where the prices being fixed are maximum prices affecting particular persons rather than a general class, however, a hearing preliminary to fixing those prices is necessary.

One of the matters not fully developed at the present stage of milk control laws is what is adequate notice of a hearing for the promulgation of a price order. The federal hearings depend upon advertising in the Federal Register to bring notice to unknown parties. Most states mail notices to all known interested parties and furnish news releases to newspapers containing information as to the time, place and subject-matter of the hearing. The prominence of milk price control legislation and orders has made interested parties so conscious of such regulation that at the present time scarcely any interested party could raise the question of adequacy of notice because he has knowledge of the time, place and subject-matter of a hearing long before it takes place.

Where a hearing is held to receive testimony for the fixing of minimum prices, it is customary that the order be accompanied by findings of fact leading to the

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69Cf. State ex rel. State Board of Milk Control v. Newark Milk Co., 118 N. J. Eq. 504, 179 Atl. 116 (1935), holding a hearing unnecessary, with Colteryahn Sanitary Dairy v. Milk Control Commission, 332 Pa. 15, 1 A. (2d) 775 (1938), holding the hearing necessary. For a comprehensive discussion of this matter with citation of numerous authorities, see WALTER GELLHORN, ADMINISTRATIVE LAW—CASES AND COMMENTS, (1940), pages 343 to 348.

60New York State Guernsey Breeders Co-operative, Inc. v. Noyes, 284 N. Y. 197, 30 N. E. (2d) 471 (1940).


order. It has been held that price-fixing orders are presumed to be valid. If the presumption of validity attaches to the order, it would seem that the validity of the order does not depend upon the issuance of findings of fact in support of the order. Where the statute requires that findings accompany an order, however, the findings must be clearly expressed before the order will be enforced. Since the findings relate to producers and dealers generally, there cannot be the same degree of particularity in the findings accompanying a general order fixing minimum prices to be paid to producers and dealers that there is in any case where a particular person is ordered to do an act on the basis of particular action by that person.

On appeal from a price-fixing order, the province of the appellate court is to determine whether the board or officer has committed error or abuse of discretion as a matter of law in promulgating and issuing the order. Whether the appellate court would have issued the same order is immaterial.

The milk price control statutes have usually incorporated into them one or more of several plans already known to the dairy industry for the purpose of maintaining proper prices to be paid producers for sanitary and wholesome milk for fluid consumption while recognizing that prices for surplus milk are necessarily subject to a nation-wide market for the products manufactured from such milk. These plans are the base-rating method of limiting production of milk to the amount necessary to supply fluid demands at any time with the producers having the option to produce more milk for manufacturing markets if they desire, the classification of minimum prices according to use made of the milk, and the pooling of returns from classified prices so as to return to each producer furnishing milk to a particular market the same amount per hundredweight for the same quality milk. Such provisions make mandatory, under particular circumstances, ar-

64See Pacific States Box & Basket Co. v. White, 296 U. S. 176, (1935).
65Harrisburg Dairies, Inc. v. Milk Control Commission, 49 Dauphin County (Pa.) Reporter 413 (1940).
69See Frank Stone, Pricing Milk for Manufacturing Purposes, Proceedings At Sixth Annual Meeting Of The National Association Of Milk Control Agencies, pages 48 to 56.
71See, for example, Pennsylvania Milk Control Law of April 28, 1937, P. L. 417, 446, section 804, 31 PS section 700j-804.
72See, for example, New York Agriculture and Markets Law, section 258-m, subdivision 6.
Arrangements that were often made voluntarily prior to the passage of milk control laws. They are best understood when considered under conditions prior to the advent of milk price control that led to their adoption.

Under the base-rating plan, milk dealers pro-rated their probable fluid milk requirements among their producers proportionately, according to past production. As long as the producer furnished his base amount of milk—that is the proportionate part of his dealer’s fluid needs that he was to supply—he received fluid milk prices for his milk. If he exceeded his quota, he received only manufacturing milk prices for the surplus.78

The classification of prices—the utilization system of paying for milk—was devised to afford producers as much as possible for milk consumed in fluid form without losing sight of the influence of market prices of milk products on the price able to be paid for milk used to make those products. Under the classification or utilization plan of paying for milk, milk to be consumed in fluid form, requiring great care in production and handling, was paid for in line with established retail and wholesale prices for fluid milk, these prices being high enough to help compensate for loss suffered by producers when surplus milk prices were low.78

"The fallacy of the system, however, is that there is no relationship between the use to which milk is put and the cost of producing that milk unless it is all produced for one particular purpose. The farmer who meets today’s high sanitary requirements for fluid milk finds little consolation in knowing that for the amount of milk that is not consumed in fluid form he will receive a price satisfactory for less carefully prepared milk."74

The equalization plan of "pooling" the classified prices due producers furnishing milk to a particular market is a refinement of the utilization system designed to preserve it from destructive price-cutting among producers to obtain the most favorable prices available for their milk. In markets where all milk was produced under the same sanitary conditions, it was equitable that all producers should receive the same price per unit of the same quality milk, regardless of the use to which it was put if part of it was used for fluid consumption.78 This plan was especially used by cooperative milk marketing associations.77

78John M. Cassels, A Study of Fluid Milk Prices, (1937) 58 to 60.
74John M. Cassels, A Study of Fluid Milk Prices, (1937) pages 58 to 60.
78Report of the Special Legislative Commission Created by Resolution No. 81 of the 1939 Pennsylvania General Assembly to Investigate the Regulation of Milk in Pennsylvania. (March 24, 1941).
78John M. Cassels, A Study of Fluid Milk Prices, (1937) pages 60 to 62.
As pointed out before, provisions for fixing minimum prices to be paid producers and minimum and maximum prices to be charged or received by milk dealers have generally been sustained. Where price-fixing has been sustained, the classification of prices according to utilization\textsuperscript{78} and the equalization of classified prices\textsuperscript{79} have also been sustained as ancillary to price-fixing.

The provision both as to minimum prices to be paid to producers and minimum and maximum prices to be charged or received by milk dealers are usually comprehensively worded to cover all forms of price-cutting.\textsuperscript{80} If all producers cut minimum prices, all would face the ruination that the milk control laws were designed to prevent. If all dealers cut minimum prices, all would soon be driven from business. But the unscrupulous individual who seeks to break up his competitor's business for his own ultimate gain often resorts to price-cutting. Any attempt to defeat the purpose of price-fixing must, therefore, be stopped. Thus, it is unlawful for producers to take promissory notes for a balance of minimum prices when it is not contemplated that the notes will ever be paid.\textsuperscript{81} Milk intended for human consumption is not removed from minimum price provisions by being labeled "Pure Pasteurized Cat and Dog Milk."\textsuperscript{82} The giving of an article free of charge with milk sold at minimum prices is a form of price-cutting.\textsuperscript{83} The forms of price-cutting are limited in diversity only by the limits of ingenuity of the price-cutter.

One of the difficulties of enforcing minimum prices is a conflict between interests of the state and federal governments. These appear most often in transactions involving milk shipped in interstate commerce and milk purchased for consumption at federal institutions in state milk markets. Where milk is handled in interstate or foreign commerce, the state of origin may fix minimum prices to be paid producers for milk sold there for shipment to another state or to a foreign

\textsuperscript{78}Rieck-McJunkin Dairy Co. v. Milk Control Commission, 332 Pa. 15, 1 A. (2d) 775 (1938), and cases cited in note 79 below.


\textsuperscript{80}See, for example, Pennsylvania Milk Control Law of April 28, 1937, P. L. 417, 446-447, section 807, 31 P.S section 700-807.


\textsuperscript{82}Milk Control Board v. Phend, 104 Ind. App. 196, 9 N. E. (2d) 121 (1937).

\textsuperscript{83}Nebbia v. New York, 291 U. S. 502, (1934) (Five-cent loaf of bread given with two quarts of milk sold at minimum price of nine cents a quart). Gagnon v. Department of Agriculture and Markets, 252 Wis. 239, 286 N. W. 549 (1939) (excessive butterfat and "donation" of 10% of price to hospitals served with milk). Cf. Limp v. Dodge, 146 Kans. 948, 73 Pac. (2d) 1001 (1937) (Giving of rebate on gasoline to producers selling cream at posted prices held violation of act requiring payment of no other than the posted price for cream).
nation unless and until Congress exercises its paramount right to fix such prices. But the state of destination cannot regulate prices to be paid producers for milk sold in the state of origin or by shipment in interstate commerce to the dealer, even in the absence of Congressional regulation. The state of destination can, however, regulate the price at which milk is sold by the importing dealer after its arrival at the state of destination, in the absence of Congressional regulation. Where Congress has undertaken to fix minimum prices for milk shipped in interstate commerce, it has been held that milk that is produced entirely within the state of destination but is handled in the same market as the regulated milk moving in interstate commerce is also subject to the federal order and not to the state order that would otherwise be applicable. Where milk is handled in the state of origin by a dealer who distributes part of it in a market under federal order in the state of destination and part of it in the state of origin, it seems that the milk used entirely within the state of origin is not subject to the federal order. It may be that all the milk coming to the plant of such dealer in the state of origin moves in the current of interstate commerce until it reaches the plant, but when that milk is divided into part for local distribution and part for distribution in another state, the part distributed locally ceases to affect interstate commerce and is subject to state rather than federal regulation.

Officers and institutions of the United States purchase large quantities of milk for consumption by war veterans, soldiers, sailors and employees. Undoubtedly the United States could have its own farms and milk plants on its own reservations and not be subject to state regulations. But when the United States purchases supplies of milk from independent milk dealers, the dealers do not enjoy immunity from state regulation.

\[\text{As often provided in state milk price control statutes that dealers or handlers are required to file collateral or surety bonds with an administrative board or officer for the protection of producers. Where minimum prices to be charged or received}\]

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90 See, for example, Article V of the Pennsylvania Milk Control Law of April 28, 1937, P. L. 417, 424-438, 31 PS section 700j-501 et seq.
by milk dealers are also to be fixed, subdealers are sometimes required to file bonds for the protection of dealers who acquire their milk from producers.\textsuperscript{91} It has been held that where the fixing of minimum prices to be paid producers for milk is a proper exercise of the police power, the requiring of bonds to assure payment of those prices is also valid.\textsuperscript{92} Likewise, a requirement that subdealers be bonded is not so remote as to exceed the power of the state to regulate the milk industry for the protection of its inhabitants.\textsuperscript{93} While it is sometimes necessary to resort to bonds to enforce payment of minimum prices,\textsuperscript{94} few of the questions of the law of suretyship have arisen under actions on milk dealers’ bonds. Since the bond is for the payment of amounts rightfully due and is not a penal bond,\textsuperscript{95} the bonds and statutory provisions under which they are issued should be more liberally construed than penal bonds and statutes requiring the filing of penal bonds.\textsuperscript{96}

The enforcement of milk price control statutes is placed in the hands of an administrative board or officer. Where there is a single administrator, he is usually the secretary of agriculture. Where there is a board it is usually composed of part-time members. Pennsylvania is unique in having a full-time commission.\textsuperscript{97} Undoubtedly the legislature may require certain qualifications of members of such a board, but the qualifications of part-time members must not be such as necessarily to make them financially interested in their own orders fixing minimum prices.\textsuperscript{98}

Compliance with price-fixing orders is enforced in three ways: by refusal, suspension or revocation of the license of a milk dealer, by criminal prosecution, and by injunction proceedings.

Before a license can be refused, suspended or revoked, the milk dealer is entitled to adequate notice\textsuperscript{99} of the charges against him,\textsuperscript{100} an opportunity to be

\textsuperscript{96}See Wilson v. Israel, 227 N. Y. 423, 125 N. E. 819 (1920).
\textsuperscript{97}Pennsylvania Milk Control Law of April 28, 1937, P. L. 417, 423, section 201, 31 PS section 700j-201.
\textsuperscript{98}Johnson v. Michigan Milk Marketing Board, 295 Mich. 644, 295 N. W. 346 (1940) (two of five members of part-time board required to be milk producers “both of whom shall have as their principal occupation and earn their principal livelihood by the actual management of one or more dairy herds.” Held, that the act was fatally defective in its provision for the appointment of the personnel of the board). See also Montgomery Ward & Co., Inc. v. National Labor Relations Board, 103 Fed. (2d) 147 (C. C. A. 8, 1939).
heard on those charges and an order against him to be issued only upon facts found by the board or officer as a result of the hearing.

Violation of a price-fixing order, being in effect a law, is punishable as a violation of law. Such violations are usually made offenses punishable by summary proceedings or misdemeanors. An attack on an order fixing minimum prices cannot be made as a defense to a prosecution for violating the order except where the order on its face is invalid. It has been held that a milk dealer is liable to prosecution for violation of a price-fixing order committed by his agent. Since the gravamen of the offense is the harm likely to be caused to public health and the dairy industry by the offense rather than the motives or intent of the wrongdoer, this seems correct.

Where a milk dealer attempts to operate without a license or otherwise persists in violating a milk control law, the board or officer in charge of enforcing the law is entitled to injunctive relief against continued operation as a milk dealer in violation of the milk control law.

When a price-fixing order has been issued, private contracts are altered to the extent that prices fixed in the contract are superseded by those applicable under the order so long as performance of the contract is continued. Thus, where a contract is entered into for the furnishing of milk at a specified price and a price-fixing order makes a minimum price higher than the contract price applicable to the particular transaction, the buyer is bound to pay the milk control price as long as milk is received under the contract. A contract to make a rebate of part of the minimum price required to be paid is, of course, illegal and unenforceable. It is not settled whether a party to a contract adversely affected by a price-fixing order entered subsequently to the making of the contract may thereupon refuse

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103See, for example, Pennsylvania Milk Control Law of April 28, 1937, P. L. 417, sections 1001 and 1002, 31 PS sections 700j-1001 and 700j-1002, making first and second offenses punishable by summary proceeding and third and subsequent offenses misdemeanors.
107See collected cases on violations of other health laws relating to milk in 122 A. L. R. 1088 to 1091 (1939).
to continue performance under the less favorable terms.\(^1\)

In the interpretation of milk control statutes there is a constant struggle between the rule that statutes in which authority is conferred upon administrative boards or officers should be strictly construed and the rule that legislation should be interpreted to carry out the intent of the legislature.\(^1\) Sometimes the strict interpretation is adopted.\(^1\) As frequently the statute is interpreted to meet all the situations that it was designed to meet.\(^1\) The necessity for regulating the entire dairy industry requires the liberal construction of milk control laws. Thus, while in a matter of a suit for infringement of a patent for imitating the design of a milk bottle small differences justify the existence of both types of bottles,\(^1\) yet in a health regulation applying to “milk bottles” all sorts of containers used for the retailing of milk must necessarily be regarded as milk bottles.\(^1\)

The development of milk price control as a branch of administrative law depends upon a continuation of the need for fresh fluid milk for human consumption and "present-day marketing machinery and methods."\(^1\) As milk control continues, there will undoubtedly be a tendency toward making the distribution of milk for human consumption a public utility.\(^1\) Already there is a movement in that direction. Formerly in New York, as is still the case in other states, the fact that an area was already adequately served was not reason enough to refuse a milk dealer a license.\(^1\) Today in New York milk dealers must show "that the issuance of the license will not tend to a destructive competition in a market already adequately served, and that the issuance of the license is in the public interest."\(^1\)

HARRISBURG, PA.

FRANK E. COHO

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\(^1\) See UNIVERSITY OF PENNSYLVANIA LAW REVIEW, pages 403 to 404 (1941).

\(^1\) See W. P. MORSTENSON, MILK DISTRIBUTION AS A PUBLIC UTILITY (1940).

\(^1\) that milk that is "purchased" includes all milk "acquired for marketing"; Milk Control Board v. Phend, 104 Ind. App. 196, 9 N. E. (2d) 121 (1937), holding that milk "sold, or intended to be sold, as such for human food" included milk processed, bottled and marketed in the same way as milk is ordinarily handled for human consumption, but labeled "Cat and Dog Milk."

\(^1\) Pecora v. Modern Sanitary Dairies of Pennsylvania, 108 Fed. (2d) 313 (C. C. A. 3, 1939), holding that "baby" bottles are not an infringement of "cop-the-cream" bottles, although the neck of each type of bottle is in the form of a face.

\(^1\) Fieldcrest Dairies, Inc. v. City of Chicago, 35 Fed. Supp. 451 (D. C. Ill., 1940), holding that a prismatic box with a gable top used for marketing milk to consumers is a "milk bottle."

\(^1\) Harrisburg Dairies, Inc. v. Eisaman, 338 Pa. 58, 63, 11 A. (2d) 875 (1940).

\(^1\) See W. P. Mortenson, Milk Distribution As A Public Utility (1940).
