

MONOPOLIES: To maintain prosecution the paying of a higher price in one place than in another place, there must be an intention to suppress competition.

December 2, 1941

Hon. G. R. Chamberlin
Prosecuting Attorney
Cass County
Harrisonville, Missouri



Dear Sir:

We are in receipt of your request for an opinion under date of November 26, 1941, which reads as follows:

"I have an insistent complaint from a merchant at Main City in this County, one Endicott, and his complaint is as follows:

"That the Harry Taylor Company, Incorporated, of Kansas City, who are dealers in cream and perhaps milk through the local man who is just across the street or road from Endicott, is paying 40¢ a pound, or some unit used by the cream dealers, and that price is above the Chicago price and more than he, Endicott, can pay without losing money.

"Endicott insists that such paying of price by this company is an offense under the Discrimination Law.

"I had run the Statutes in the matter and do not myself find anything that would show this undue discrimination, but he insists that he is informed that your office has given an opinion to that effect.

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"I am therefore writing you in order to make certain whether or not a company in Kansas City paying more than the local price or even more than the cream is worth would come within the Undue Discrimination Law, and would be an offense that might be issued against."

In the above request you state that this office has rendered an opinion upon this matter. I find that we have not rendered an opinion, but that in several instances letters have been written by this office which are not to be considered as official opinions.

Under the facts in the above request we find that the section applicable to a prosecution, if such is had, is Section 8318, R. S. Mo. 1939. This section has only been construed in one instance by the Supreme Court of this state. In that case a poultry corporation had been filed on by the Attorney General's office in a quo warranto proceeding for the violation of this section. The court in that case, on the question of whether or not the corporation had violated this section in paying higher prices for eggs in the city of Mexico than the price paid for eggs in the city of Wellsville, held that the main question was the intent to suppress competition. In that case, which was State v. Blattner Bros, 226 S. W. 253, Para. 2, the court said:

"While there may be some isolated expression of the officers of the respondent, if considered alone, which might point to an intent to discriminate for the purpose of destroying competition, yet when read and considered in connection with the entire evidence in the case, we are of the opinion that Commissioner Cave properly found that there was no intent shown on the part of the respondent to destroy competition. At

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most, said expressions must be construed in the light of attempts to boost respondent's business, which is not prohibited by any law of which I know."

So, the real question is a question of fact which this office cannot pass upon. If it can be proven that it was the intent of the Harry Taylor Company, Incorporated, by paying more than the market price for cream to suppress competition of another concern they can be prosecuted under this section.

Respectfully submitted,

W. J. BURKE
Assistant Attorney-General

WJB:CP

APPROVED:

VANE C. THURLO
(Acting) Attorney-General