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MILK PRICE CONTROL IN WISCONSIN*

INTRODUCTION

For the third consecutive session a Milk Marketing Control Act, intended to stabilize Wisconsin's dairy industry through regulation of milk prices and trade practices, has been presented to the Legislature. 1963 Bill 500, S. has passed the Senate and is now before the Assembly.

This study is a brief summary of Wisconsin milk price control legislation and of current milk price regulation in other states and federally.

Wisconsin, top dairy state, has a king-size share of the milk industry headaches. Consumers resent rising prices, small dealers fear unfair competitive practices, big dealers fight interstate trade barriers. The entire industry battles foreign imports, oleo, fall-out radiation scares, polyunsaturated fat diets, anti-cholesterol claims.

The farmer contends he is the chief victim of the milk price structure. The farmer cannot hold back his commodity for long in order to bargain for a fair return. Milk must get to market fast because it is perishable. And, because milk is so essential a part of the daily diet, consumers cannot tolerate any lengthy strikes that would deprive their families of milk.

Fluctuating price formulas and varying methods of classing and distribution make it difficult for farmers to understand the involved story of how they are paid. They are only certain that their share of the producer-to-consumer price spread is disproportionately small.

The farmer's plight inspired the first emergency milk control laws of the 1930's, and today the farmers and their producer co-ops are among those most insistent that the state resume price regulation and stabilization of the dairy industry.

THE FIRST MILK CONTROL LAWS

Government milk price control was born in the depression of the 1930's. As consumer prices tumbled, dealers tried to protect their profit margin at the farmer's expense, cutting his milk check below the cost of production. A wave of price wars, violent milk strikes and milk dumping episodes led to intensive federal and state studies of possible legislation to protect the farmer's livelihood and stabilize the industry.

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Wisconsin enacted the nation's first state milk price control law April 6, 1933. Four days later New York enacted the second state law; in May 1933, passage of the Agricultural Adjustment Act inaugurated federal milk price control. Within 3 years more than 20 dairy states had similar price control acts.

Provisions of Wisconsin's first milk price law (Chap. 64, Laws of 1933) were, according to the act, "made necessary by a public emergency existing since November 1, 1932, growing out of the present economic depression, the present financial condition of the farmer delivering milk to certain city markets, unfair methods of competition of certain dealers buying milk for resale in such city markets, which condition seriously affects and endangers the public welfare, health and morals".

The law gave the Department of Agriculture and Markets broad powers to regulate prices to the producer and eliminate unfair trade practices. It provided that "all increases in retail prices shall go to the producer". The emergency measure, designed to terminate in 2 years, lasted almost 9 years, extended and amended in the next 3 legislative sessions. In 1941, Senate and Assembly bills to extend the law indefinitely were killed, and the act expired at the end of the year.

FURTHER ATTEMPTS AT STATE PRICE CONTROL

In the next 18 years there was only one legislative attempt to revive over-all state control of milk prices and trade practices-- Bill 644, S., 1953, killed in the Senate. There were also scattered attempts at piecemeal legislation on various facets of the milk price problem. For example, a 1943 bill sought price differentiation for home-delivered and store-purchased milk; one 1957 bill required dairy plants to post prices to producers, explaining the basis of payment; another 1957 bill would have permitted producers to examine the records of financially shaky dairy plants that might not be able to pay for milk.

THE LATEST MILK CONTROL BILLS

The current drive for state milk price control began in 1959 when Bill 809, A. was introduced by Assemblyman Leland Mulder (Dem., La Crosse) at the request of the Pure Milk Products Co-operative and the Madison Milk Producers Co-operative Association.

Unlike the 1933 act which gave the Department of Agriculture regulatory control of the milk industry, the 1959 bill called for a separate Department of Milk Marketing Control, self-financed by dealer license fees. Headed by a director under civil service, the department was to have broad powers to investigate, license and regulate the milk industry, with the emphasis on price control. The Assembly Committee on Agriculture recommended indefinite postponement of the bill, and the Assembly killed it by voice vote.

Again in 1961, as dairy farmer associations kept calling for state price control, the Legislature considered a Milk Marketing Control Act. Bill 687, S. was introduced by 3 Republican Senators-- Clifford Krueger (12th Dist.), J. Earl Leverich (31st Dist.), Earl Morton (22nd Dist.), and 3 Democratic Senators--Howard Cameron (23rd

Dist.), Lynn Stalbaum (21st Dist.), Carl Thompson (16th Dist.). The 1961 bill differed slightly--it specified a department director outside of civil service and added an unfair trade practices section. This time the Senate Committee on Agriculture recommended passage, but the Senate killed the bill, 18 to 13.

In response to continued requests by dairy farmer representatives, 1963 Bill 500,S., virtually a duplicate of the 1961 bill, was introduced this year by 3 Republican Senators--Reuben La Fave (30th Dist.), Clifford Krueger (12th Dist.), Earl Morton (22nd Dist.), and 3 Democratic Senators--Frank Christopherson, Jr. (25th Dist.), Lynn Stalbaum (21st Dist.), Carl Thompson (16th Dist.).

The currently proposed Milk Marketing Control Act has so far fared better than the previous ones. The Senate Committee on Agriculture unanimously recommended passage and the Senate passed the bill by a more than 3 to 1 vote (20 to 6). Now it awaits Assembly action in the November session.

The line-up for and against a Milk Marketing Control Act has been essentially the same at public hearings on the 1959, 1961 and 1963 bills. Representatives of the Wisconsin Farmers Union, producer co-operatives, small independent dairy firms and numerous individual dairymen have spoken or registered in favor of the act. Those against it have included representatives of organizations of dealers, milk product manufacturers and retailers, and the Wisconsin Farm Bureau.

At the April 17th hearing on the current 1963 Bill 500,S. before the Senate Committee on Agriculture, the list of those for the bill included representatives of the Pure Milk Products Co-operative, Independent Dairies of Wisconsin, Inc., Wisconsin Independent Retail Grocers Association, Wisconsin Farmers Union, Wisconsin Association of Co-operatives, Kenosha Producers Co-operative, Dairy Milk Producers, Eau Claire Dairymen's Co-op Association, Independent Dairies of Wisconsin, Assemblyman Robert Barabe and Senate coauthors Frank Christopherson, Jr., Clifford Krueger and Earl Morton, numerous small dairy firms and individual dairymen. In addition, the committee received petitions for the bill signed by 333 people from 11 counties. The bill was opposed by Senator Jerris Leonard and representatives of Sealtest Foods and the Wisconsin Creameries Association.

PROVISIONS OF 1963 BILL 500,S., THE PROPOSED MILK MARKETING CONTROL LAW

A new Department of Milk Marketing Control is to be established, self-financed through license fees and hundredweight administration fees segregated in a milk marketing control fund. The department includes a 3-man policy board appointed by the Governor, a director, deputy director and sufficient staff to fix prices and regulate trade practices in the fluid milk industry. The legislative purpose as outlined in the bill follows:

"In the exercise of the police power of the state, it is declared that the production, distribution and sale of fluid milk and fluid milk products, ...in this state, is

a business affecting the public interest; that the production, distribution and sale of fluid milk and fluid milk products in this state are attendant with serious conditions affecting milk producers, milk dealers and handlers and consumers of milk; that trade practices have been carried on and are now being carried on in the sale of fluid milk and fluid milk products by milk dealers and handlers to retailers and by retailers to consumers which are unfair and unjust and which constitute a menace to the health and welfare of the inhabitants of this state. That it is the policy of this state to insure the sale of fluid milk and fluid milk products at such prices as will be most beneficial to the public interest, best protect the milk industry of this state and insure a sufficient quantity of pure and wholesome fluid milk and fluid milk products to the inhabitants thereof; that .../the Milk Marketing Control Law is/ enacted for the purpose of regulating and controlling the fluid milk and fluid milk products industry in this state, for protection of the public welfare and for the prevention of fraud."

Department powers include administration of the following specific provisions:

Entry and Inspection--The department may inspect all places, equipment and records involved in any phase of the fluid milk industry, to obtain information for confidential departmental use.

Licenses--The department grants and controls the licenses required for all dealers, handlers and co-operatives (with certain exemptions). Grounds for license suspension or revocation include failure to pay for milk purchases from producers, refusing milk from producers who have customarily dealt with the licensee, and retaliatory rejection of milk from a producer who has testified in a case before the department or in court.

Records and Reports--Dealers must keep detailed records of milk transactions, retaining them at least 3 years as the basis for periodic reports to be verified by the department. The department will specify the form, period of coverage and time for filing.

Milk Prices--The department will issue orders fixing the minimum and maximum wholesale and retail prices for fluid milk, the minimum prices paid to producers, and the terms of payment. The department will have discretionary powers for classifying fluid milk and for fixing minimum wholesale prices for bulk or package milk and milk products. Exemptions from price fixing include milk sold for consumption on the premises, milk sales to governmental agencies based on competitive bids, and purchases or sales to schools or boards of education.

The basis for determining prices will be departmental evaluation of testimony at public hearings for interested persons, and studies of conditions affecting the milk industry in the preceding year. The department will then ascertain the amount needed to assure

equitable consumer prices as well as a reasonable return based on a "cross-section representative of the average or normally efficient producers and dealers or handlers".

Unfair Trade Practices--Certain specified "favours" in the form of gifts, loans, equipment or advertising, intended to influence a retailer to exclusive use of the commodities of a particular dealer or handler, are prohibited. Credit to retailers is limited to 30 days, payable 15 days thereafter.

Penalties and Remedies--Violators of the Milk Marketing Control Law provisions or of department rules and orders are subject to a fine of \$25 to \$200 or a jail sentence of 10 to 30 days. For the third or subsequent offense the penalty rises to \$500 to \$1,000, up to a year in jail, or both.

Court injunctions may be employed by the department to enforce compliance or restrain violations of its orders and rules. Any producer may institute proceedings before the department against a milk dealer or handler for violation of price regulations, or the department itself may initiate such proceedings.

Interstate and Federal Compacts--The department is authorized to join other states and U.S. authorities working toward inter- and intrastate uniform fluid milk control. The department may enter into compacts for such uniform control, subject to the Governor's approval and federal approval where required.

PRESENT MILK INDUSTRY REGULATION IN WISCONSIN

Wisconsin keeps a statutory rein on the dairy industry's trade practices, although the state has not fixed milk prices since 1941. The Department of Agriculture enforces the general statutes on sanitation, false advertising, marketing practices, etc., as they apply to milk marketing, as well as the statutes specifically governing dairying, and the supplementary rules laid down in the department's Administrative Code.

The major laws governing Wisconsin milk marketing today include:

Trusts and Monopolies, Ch. 133, Stats.--contains general trade practice provisions applicable to the dairy industry, including Secs. 133.17 through 133.185 on unfair discrimination in trade, secret rebates and other unfair practices. When dairy industry violations of these sections come to the attention of the Attorney General, he files a written complaint with the Department of Agriculture for departmental and court action.

Dairy, Foods and Drugs, Ch. 97, Stats.--contains general and dairy-specific provisions on standards, sanitation, licenses, records and reports, adulteration, imitation, substitutes and fraudulent labeling and advertising.

Weights and Measures, Ch. 98, Stats.--provides for municipal departments of weights and measures, with police powers to enforce

state and municipal commodity standards, including methods of weighing, testing and labeling, the milk fat content of milk or cream, and the size of milk bottles.

Marketing; Warehouses; Trade Practices, Ch. 100, Stats.--contains specific dairy sections, 100.06 on the financial condition of licensees, 100.07 on milk payment audits, and Secs. 100.201 through 100.23 on unfair practices and discrimination in purchase of dairy products. (The proposed Milk Marketing Control Act incorporates the provisions of these sections.) Chapter 100 also contains general provisions applicable to the dairy industry--100.30, the unfair sales act, providing for a minimum markup over wholesale and retail prices; 100.15, regulation of trading stamps; 100.18, fraudulent advertising, and 100.20, methods of competition and trade practices.

Administrative Code of the Department of Agriculture--the code extends and implements the above statutory provisions through rules including Ag 7 on trusteeships for financially insecure dairy plants; Ag 102 on accurate statements, records and reports; Ag 104 on milk audits; Ag 107 on sampling and testing milk and cream; and Ag 109 on dairy industry trade practices.

FEDERAL AND STATE MILK PRICE CONTROL TODAY

Federal orders set minimum producer prices in some 80 dairying sections of the country, where a majority of the producers have requested such regulation. Five of these orders affect Wisconsin milk prices--the Milwaukee area order, the Madison area order (13 counties), the Northeast Wisconsin area order (several counties), the Rock River Valley area order (Wisconsin's Rock County is part of it), and the Chicago area order (almost half the Chicago area milk comes from Wisconsin). In Milwaukee a price formula is set for each individual handlers' pool in the area; in the other order areas the price formula is set for a market-wide pool.

Southern Wisconsin is a major milk producing area, and one study ("The Use of Federal Milk Marketing Orders in Southern Wisconsin", U.W. Dept. of Agricultural Economics, June 1959) has this to say about the region:

"Approximately 8,400 producers in the 18 Southern Wisconsin counties deliver milk to Order 41 plants (the Chicago area) or transfer points. In addition the Milwaukee order market has some 1,700 producers in the area and several out-of-state order markets other than Chicago have nearly 270 producers located there. Thus a total of about 10,730 Southern Wisconsin producers sell in Federal order markets. About 900 Grade A producers in the area, or roughly 8% of the total, deliver milk to plants and dealers not regulated by federal orders...

"The Chicago market is the principal and dominating pricing force in Southern Wisconsin. Chicago price movements establish the general pattern of price movements in Southern Wisconsin markets. When Chicago prices move up or down, similar movements usually occur in the small markets."

Federal orders set only minimum producer prices. In some cases dairymen and their co-operatives may gain higher prices through intensive bargaining with dealers and handlers; in some cases where they do not come under federal orders they may have to accept less. The ladder of milk prices between the farmers milk check and the final consumer price is affected by factors such as seasonal surpluses and the costs of processing, distributing and competing. Beyond the federal regulation of minimum producer prices, there is no regulation of the milk price structure in Wisconsin. It fluctuates in a manner that many consumers, producers, small milk firms and retailers consider unnecessarily chaotic and oppressive, but capable of stabilization under a Milk Control Act like that of other dairy states.

Currently 17 states have such laws--12 fix producer and retail prices--Alabama, California, Florida, Maine, Mississippi, Montana, Nevada, New Hampshire, New Jersey, Pennsylvania, Vermont and Virginia; 5 fix only producer prices--Louisiana, Massachusetts, New York, North Carolina and South Carolina.