

1979 S.C. Op. Atty. Gen. 93 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-71, 1979 WL 29076

Office of the Attorney General

State of South Carolina

Opinion No. 79-71

June 1, 1979

***1 SUBJECTS: Administrative Procedure, Rule and Regulations**

Where the Dairy Commission prescribes the time and manner in which wholesale milk distributors must file price schedules with the Commission, or make amendments to schedules already filed, the time and manner so prescribed must be established in accordance with the requirements of Article I of Act No. 176 of 1977.

TO: Irvin D. Parker

State Consumer Advocate and Administrator of the Department of Consumer Affairs

QUESTION:

Must the Dairy Commission prescribe the time and manner for filing price schedules with the Commission in accordance with the provisions of Article I of Act No. 176 of 1977?

STATUTES AND CASES:

[Code of Laws of South Carolina \(1976\) §§ 1-23-10\(1\), 1-23-10\(4\), 1-23-10\(4\), 39-33-500](#)

[State ex. rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E. 2d 778 \(1964\).](#)

DISCUSSION:

You have asked whether the Dairy Commission must prescribe the time and manner in which price schedules are filed with the Commission in accordance with the provisions of Article I of Act No. 176 of 1977. It is the opinion of this Office that statements of the Commission prescribing the time and manner in which price schedules are filed with the Commission are 'regulations' which must be promulgated in accordance with the provisions of the Act.

South Carolina Code § 39-33-500 (1976) provides in part as follows:

Each distributor required to obtain a license by §§ 39-33-430 and 39-33-440 shall file with the Commission, within such time and manner as the Commission may prescribe and on forms furnished by the Commission, schedules showing all prices established by such distributor for all products covered by Articles 1 through 7 of this Chapter and offered for sale by such distributors . . . The price schedules filed with the Commission as required by this Section may be changed or withdrawn only on forms furnished by the Commission and by filing a copy of the new or modified schedule of prices with the Commission at such time in the manner prescribed by rules and regulations of the Commission.

The foregoing Section clearly requires the Commission to prescribe by regulation the time and manner by which price schedules already filed with the Commission may be changed or withdrawn. While the statute does not explicitly require the Commission to promulgate regulations prescribing the time and manner in which original price schedules must be filed with the Commission, it seems clear that such time and manner requirements must likewise be promulgated by

regulation. Otherwise, the statute would be read as requiring that the Commission need only prescribe by regulation the way price schedules could be amended, but that the Commission need not prescribe by regulation the way in which such schedules must be originally filed. It is unlikely that the Legislature intended such an absurd interpretation. See, [State ex. rel. McLeod v. Montgomery](#), 244 S.C. 308, 136 S.E. 2d 778 (1964).

*2 While the Commission must promulgate by regulation the time and manner in which price scheduled are filed or modified, the question of whether or not such regulations must be promulgated in accordance with Article I of Act 176 of 1977 depends upon whether or not the regulations are 'regulations' within the meaning of that Act. Act 176 of 1977, commonly known as the Administrative Procedure Act, is codified in §§ 1-23-10 et seq. of the 1976 South Carolina Code of Laws. [South Carolina Code § 1-23-10\(4\)](#) defines 'regulation' as ' . . . each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency.' There is little doubt that the State Dairy Commission is an 'agency' within the meaning of the Administrative Procedure Act. [Section 1-23-10\(1\)](#) defines 'agency' as ' . . . each state board, commission, department, executive department or officer, other than the Legislature or the Courts, authorized by law to make regulations or to determine contested cases.' Even a casual review of the statutes relating to the Dairy Commission reveals that the Commission has the authority to both make regulations and determine contested cases. The time and manner in which price schedules must be filed with the Commission or modified are clearly matters of policy. Moreover, any statement of the Dairy Commission establishing such time and manner is a statement of general public applicability, in that it uniformly applies to any and all persons to whom § 39-33-500 applies. It is clear that statements of the Dairy Commission prescribing the time and manner in which price schedules must be filed or modified are 'regulations' within the meaning of [§ 1-23-10\(4\)](#). Since they are regulations within the meaning of that Section, they must be established in accordance with the procedures outlined in the Administrative Procedure Act for the promulgation of regulations:

CONCLUSION:

It is therefore the opinion of this Office that, where the Dairy Commission prescribes the time and manner in which wholesale milk distributors must file price schedules with the Commission, or make amendments to schedules already filed, the time and manner so prescribed must be established in accordance with the requirements of Article I of Act No. 176 of 1977.

L. Kennedy Boggs
Assistant Attorney General

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