

1978 S.C. Op. Atty. Gen. 102 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-71, 1978 WL 22552

Office of the Attorney General

State of South Carolina

Opinion No. 78-71

April 12, 1978

***1 SUBJECT: Dairy Commission Order, Administrative Procedure Act**

Pricing Orders established by the South Carolina Dairy Commission are not regulations as defined by the State Register and Administrative Procedures Act, Act No. 176 of 1977 and therefore are not subject to approval by the General Assembly.

TO: Charles A. Shaw

Director

South Carolina Dairy Commission

QUESTION:

Are pricing orders established as a result of a hearing by the South Carolina Dairy Commission regulations, as that term is defined in Article I, Section 1(4) of Act No. 176 of 1977 and thereby subject to General Assembly approval?

STATUTES AND CASES:

Code of Laws of South Carolina § 39–33–1030(1976); Act No. 176, 60 Acts and Joint Resolutions 391 (1977).

DISCUSSION:

Code of Laws of South Carolina § 39–33–1030 (1976) authorizes the South Carolina Dairy Commission to establish, after a public hearing, minimum milk prices in accordance with standards set out in that code section. The Commission is permitted to establish these prices by order in subsection (D) of § 39–33–1030. On June 7, 1977, a public hearing was held by the Commission to determine if adjustments in the minimum price of milk was necessary. Subsequently the Commission issued two orders concerning the minimum pricing of milk, Wholesale Pricing Order No. 77–1 and Producer Pricing Order No. 78–1. These orders provided for the various classifications of milk products and establishes minimum prices for the production and wholesale sale of these products. The question posed is whether these orders are regulations within the definition of Article I Section (4) of Act No. 176 of 1977, and are therefore subject to General Assembly review as provided by that Act.

Article I Section (4) provides in pertinent part that:

‘Regulation’ means each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. The term . . . does not include . . . decisions or orders in rate making, price fixing or licensing matters.

Since the definition of a regulation specifically excludes price fixing matters, it is the opinion of this Office that the above mentioned pricing orders are not subject to General Assembly approval. Article I, Section 12 provides that regulations are subject to approval by the General Assembly and since pricing orders are specifically excluded from the definition of

a regulation, this section is inapplicable to the pricing order under consideration in this opinion. It is suggested however, that this order be published in the State Register for informational purposes pursuant to Article I, Section 4(2).

CONCLUSION:

Pricing orders established after a public hearing and pursuant to Code of Laws of South Carolina § 39-33-1030 (1976), are not regulations as that term is defined by Article I, Section 1(4) of Act No. 176 of 1977 and therefore are not subject to General Assembly review.

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State Attorney

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