

1978 S.C. Op. Atty. Gen. 191 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-162, 1978 WL 22630

Office of the Attorney General

State of South Carolina

Opinion No. 78-162

September 29, 1978

**\*1 SUBJECT: State Agencies, Dairy Commission**

Contracts entered into before the Dairy Commission raised the minimum wholesale price of milk are subject to the new price.

TO: Charles A. Shaw  
Director  
S.C. Dairy Commission

**QUESTION:**

What is the effect of new minimum wholesale price regulations for milk on pre-existing contracts?

**STATUTES AND CASES:**

[Manigault v. S. M. Ward and Co.](#), 123 F. 707 (4th Cir. 1903);

[Zeuger Milk Co. v. School District of Pittsburgh](#), 334 Pa. 277, 5 A.2d 885 (1939);

Code of Laws of South Carolina (1976), Section 39–33–1030;

36A C.J.S., Food, § 2.

**DISCUSSION:**

On September 7, 1978, the South Carolina Dairy Commission, pursuant to Section 39–33–1030 of the Code of Laws of South Carolina (1976), raised the minimum wholesale price for milk for governmental institutions to twelve and one quarter cents per pint, effective October 1, 1978. You have inquired whether the new minimum prices are applicable to contracts entered into prior to either the adoption of or the effective date of the new regulations. It is the opinion of this Office that such contracts would be governed by the new minimum price as of its effective date.

The applicability of the new minimum price to existing contracts is governed by well recognized principles of law. 36A C.J.S., Food, § 2, provides:

[W]here the purchaser continues to receive milk after the board fixes a minimum price higher than the price specified in the contract, it becomes obligated to pay for the milk at the higher price.

The Court in [Zeuger Milk Co. v. School District of Pittsburgh](#), 334 Pa. 277, 5 A.2d 885 (1939), discusses the reasoning behind such a doctrine:

[T]he legitimate exercise of the police power will be upheld by the courts, although it incidentally destroys existing contract rights. All contracts made with reference to any matter that is subject to regulation under the police power must be understood as made in reference to the possible exercise of that power

Accord, [Manigault v. S. M. Ward and Co.](#), 123 F. 707 (4th Cir. 1903). It should be further noted that a sale of milk for less than the price fixed by the Dairy Commission would be subject to an injunction. Section 39–33–1030 of the Code of Laws of South Carolina (1976).

Based upon the authorities herein cited, it is the opinion of this Office that contracts entered into prior to either the adoption of or the effective date of the new minimum price regulations must be modified as to price on the effective date of such regulation.

CONCLUSION:

Contracts entered into before the Dairy Commission raised the minimum wholesale price of milk are subject to the new price.

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