

# Legal Aspects of State/Regional Policy Options

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## State Economic Regulation of Milk

- ▶ *Nebbia v. People of State of New York* (1934)
  - United States Supreme Court
  - Milk price controls were only unconstitutional if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature was free to adopt
  - Equal Protection and Due Process Clauses of the United States Constitution

## State Economic Regulation of Milk

- ▶ Commerce Clause of the United States Constitution
  - Grants to Congress the power to regulate commerce among the states
  - Dormant Commerce Clause – interpreted to prohibit states from regulating interstate commerce
    1. Extraterritorial Impact
    2. Discrimination
    3. Burdens vs. Benefits

## State Economic Regulation of Milk

- ▶ Dormant Commerce Clause
  - Extraterritorial Impact
  - *Baldwin v. G. A. F. Seelig, Inc.* (1935)
    - United States Supreme Court
    - New York unlawfully imposed minimum price on raw milk purchased in Vermont by New York dealers

## State Economic Regulation of Milk

- ▶ Dormant Commerce Clause
  - Discrimination
    1. Purposeful discrimination
    2. Prohibitions on the flow of interstate goods
    3. Differential treatment that benefits in-state entities and burdens out-of-state entities
      - *West Lynn Creamery v. Healy (1994)* – pricing order by the Massachusetts Department of Food and Agriculture violated the Dormant Commerce Clause because it benefited in-state economic interests by burdening out-of-state competitors

## State Economic Regulation of Milk

- ▶ Dormant Commerce Clause
  - What if there is no Extraterritorial Impact or Discrimination?
    - Burden on interstate commerce vs. local benefits
    - *Pike* Balancing Test – law will be upheld unless the burden imposed on interstate commerce is clearly excessive in relation to the putative local benefits.
      - *Pike v. Bruce Church, Inc. (1970)*

## State Economic Regulation of Milk

- ▶ Pennsylvania Milk Marketing Law
  - In essentially its present form, with periodic amendments, since 1937
  - Regulates Producer, Wholesale, and Retail prices
  - Milk Producers' Security Act, Milk Marketing Fee Act, and Regulations

## Pennsylvania Milk Marketing Law

- ▶ **§801. Requisites of orders fixing price of milk**
  - The board shall ascertain, after a hearing in which all interested persons shall be given reasonable opportunity to be heard, . . . and maintain such prices paid to producers, to dealers and to stores for milk in the respective milk marketing areas as will be most beneficial to the public interest, best protect the milk industry of the Commonwealth and insure a sufficient quantity of pure and wholesome milk to inhabitants of the Commonwealth, having special regard to the health and welfare of children residing therein.
  - The board shall base all prices upon all conditions affecting the milk industry in each milk marketing area, including the amount necessary to yield a reasonable return to the producer, which return shall not be less than the cost of production and a reasonable profit to the producer, of the quantity of milk necessary to supply the consumer demand for fluid milk plus a reasonable reserve supply as determined by the board, and a reasonable return on aggregate milk sales by milk dealers or handlers and stores selling milk.

# Pennsylvania Milk Marketing Law

## ▶ §802. Wholesale and retail prices

- Board is *required* to set minimum wholesale and retail prices

## ▶ §803. Prices to producers

- Board is *required* to set minimum producer prices for Class I milk

# Pennsylvania Milk Marketing Law

## ▶ §807. Violations

- After the board shall have fixed prices to be charged or paid for milk, . . . it shall be unlawful for a milk dealer or handler or producer or directors or officers of a cooperative association . . . by himself or through another, to sell or deliver, or make available on consignment or otherwise, or buy or receive, or handle on consignment or otherwise, or offer to sell or deliver or make available on consignment or otherwise, or buy or receive or handle on consignment or otherwise, or advertise for sale, delivery, purchase or receipt, or hold one's self out as willing to sell, deliver, buy or receive milk at any price below the minimum price . . . applicable to the particular transaction.
- No method or device shall be lawful whereby milk is bought or received . . . , or sold or handled or delivered . . . , or offered to be bought or received . . . , or sold or handled or delivered . . . , at a price less than the minimum price applicable to the particular transaction, whether by any discount, premium, rebate, free service, trading stamps, advertising allowance, or extension of credit, or by a combined price for such milk, together with another commodity or a service which is less, or is represented to be less, than the aggregate of the price of the milk and the price or value of such commodity or service when bought or received or handled on consignment or otherwise, sold or delivered or made available on consignment or otherwise, or offered for sale, delivery, purchase, handling or receiving separately or otherwise.

## Pennsylvania Milk Marketing Law

- ▶ No method or device shall be lawful whereby milk is bought or received . . . , at a price less than the minimum price applicable to the particular transaction
- ▶ Regulations – 7 Pa. Code §145.21 - §145.26

## Pennsylvania Milk Marketing Law

- ▶ 7 Pa. Code §145.21 – Prohibits “giveaways” by milk dealers as an inducement for the purpose of soliciting business
- ▶ 7 Pa. Code §145.22 – Prohibits free samples to retail customers (but does not prohibit samples for “on-premises” consumption)
- ▶ 7 Pa. Code §145.23 – Regulates gifts to established retail customers
- ▶ 7 Pa. Code §145.24 – Prohibits samples or gifts to wholesale customers
- ▶ 7 Pa. Code §145.25 – Loans to wholesale customers are treated as an “extension of credit” as that term is used in section 807 of the Milk Marketing Law
- ▶ 7 Pa. Code §145.26 – Extension of credit is prohibited beyond 30 days from the date of invoice

## Regional Regulation

- ▶ Compact Clause – United States Constitution
- ▶ Northeast Interstate Dairy Compact