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IN THE

Supreme Court of Appeals of Virginia

AT STAUNTON

(Transferred from Richmond)

R. J. REYNOLDS, ET ALS.

v.

MILK COMMISSION OF VIRGINIA.

PETITION OF PRODUCERS AND DISTRIBUTORS IN
THE STAUNTON-WAYNESBORO MILK SHED,
FILED AMICUS CURIAE.

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RICHMOND, VIRGINIA

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**PETITION OF PRODUCERS AND DISTRIBUTORS IN
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*To the Honorable Justices of the Supreme Court of
Appeals of Virginia:*

Your petitioners respectfully beg leave to file this petition in support of the petition for re-hearing filed in behalf of the Milk Commission of Virginia, by the Honorable Attorney General. The law of the case is fully set forth in the said petition of the Attorney General, and so fully and adequately covers the questions

raised in this case that your petitioners will only address themselves to the facts in the case as they effect producers, distributors and consumers in the area known as the "Staunton-Waynesboro Milk Shed."

THE FACTS AND ARGUMENT

1. The Act of the General Assembly, approved March 29, 1934, which is the subject of this inquiry, while no fact-finding committee had especially reported on the act, nevertheless, in connection with other proposed legislation full hearings were had before proper committees as to the conditions surrounding the production and distribution of milk in Virginia. Following the passage of the act by a large majority of both branches of the Legislature, his Excellency, the Governor of Virginia, then held a hearing on the bill before making it the law by adding his signature thereto, so that the information developed at the several hearings, plus the practical information and knowledge of each of the members of both branches of the Assembly, gave the Assembly as much, or possibly more information than was had by the Legislature in New York before the passage of the act in that State.

It seems, therefore, that the General Assembly of Virginia was in a position to say "To promote the public welfare, public health, and public peace," thereby placing the act squarely under the police powers of the Commonwealth. It has been practically conceded by the parties to this proceeding that chap-

ter 51 of the Code of Virginia is a valid exercise of police power. This chapter deals primarily with the production and sale of food stuffs, principally milk. Pursuant to this chapter, your petitioners expended large sums of money to comply with not only the letter, but the spirit of the laws laid down in this chapter; while the defendants in the case complied only with the bare letter of the law and did not increase their facilities or their capital expenditure, which necessarily increased the cost of producing wholesome milk as required by chapter 51. Such expenditures required by the chapter referred to without providing the means by which producers and distributors could be repaid would, had it not been an exercise of police power of the state, violate the constitutional rights of your petitioners.

It seems, therefore, that the Act of 1934 should necessarily follow as a part of chapter 51 to remedy this apparent deficiency in the chapter referred to.

Certainly the Commonwealth is solicitous of the health and welfare of all its people, and would not, in the exercise of police power, say that you must make large expenditures to insure the consumers a wholesome supply of milk, and then permit the tyrannical minority whose compliance with the sanitary laws is very doubtful, to make it impossible for those who have obeyed the sanitary laws, to continue in business after making the required investment. Certainly such action on the part of the State would constitute the taking of the investments made by your petitioners. In this particular milk shed upwards of \$40,000 has been expended by your petitioners in complying with

the law. They are now in a position to furnish wholesome milk at fair prices. Unless such minimum prices as have or may be fixed by the Milk Commission are permitted to continue to be enforced, then the entire investment made necessary under the sanitary laws will be a total loss, and without the additional enforcement facilities afforded without expense to the Commonwealth by the Milk Commission there is very little likelihood that the consumers will be assured of the continuance of the supply of wholesome milk at a fair price according to its food value, that is, butter fat content.

The argument has been advanced that under the milk act those things may be done which are unreasonable and which would constitute a violation or infringement of private rights. The same argument may be advanced as to chapter 51, the sanitary laws, in which there is left to the discretion of the inspectors the type of equipment to be used. These inspectors may assume very unreasonable attitudes which could not be enforced under the law. Nevertheless, this does not make the act itself unconstitutional or void in any respect. Naturally, the same thing could be true of the act under discussion. That is, an unreasonable exercise of powers conferred. The court is always ready and willing to protect private rights when there has been an infringement by the agencies of the government or by private persons. So, it seems that the argument thus advanced is without merit.

A further argument which has been advanced, and which we believe is without merit, is that the act does not deal uniformly with all the citizens of the State.

In the enforcement of laws in Virginia, the State necessarily concentrates its law enforcement officers at those points where violations occur most frequently, and in sections where experience shows that the laws will not be violated except on infrequent occasions, very few, if any peace officers are maintained. We have always concentrated the officers within the areas constituting the centers of population, at which points generally such officers are needed. It cannot be said that this action on the part of the State overlooks its duty toward those citizens in more peaceful communities. Again we say that the act under discussion is so framed that it can take care of communities where the danger exists without the unnecessary expense of maintaining the machinery where there was no need for it.

It is believed that the elimination of the act of 1934 will make it impossible for those supplying the major demand for milk, to operate. Should these firms be compelled to leave the field, the very doubtful supply of milk will be all that is left to fulfill daily requirements, and that the consumer will, in addition to the financial loss to the producers and distributors, be able to purchase milk of doubtful quality and food value. This danger, while it may not be apparent thru the cold weather period, will become a real danger when warm weather is here again, because of the well known increase of dangerous bacteria thru the warm seasons of the year when insufficient equipment is used to handle it.

For the reasons above set forth, and those contained in the petition of the Attorney General in Vir-

ginia, and other groups of producers, distributors and consumers interested, we respectfully urge that a re-hearing of the decision and decree in this connection may be granted the Milk Commission of Virginia.

Respectfully,

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