SF 257

. N45

1919

STATE OF NEW YORK *Laws, statutes, etc*
DEPARTMENT OF FARMS AND MARKETS
DIVISION OF FOODS AND MARKETS

DR. EUGENE H. PORTER, Commissioner

ALBANY

PROVISIONS

of

Article III of the Agricultural Law

Secs. 55 to 61 inclusive

relating to

MILK DEALERS' LICENSES

1919

ARTICLE 3

Dairy Products

Section 55. Licensing of milk gathering stations where milk is bought.

56. Power of commissioner to investigate.

57. Granting and revoking licenses.

58. Certiorari to review.

59. Records to be kept.

60. Right of review.

61. Offenses.

§ 55. Licensing of milk gathering stations where milk is bought.

On and after September first, nineteen hundred and thirteen, no person, firm, association or corporation, shall buy milk or cream within the state from producers for the purpose of shipping the same to any city for consumption or for manufacture unless such business be regularly transacted at an office or station within the state and unless such person, firm, association or corporation be duly licensed as provided in this and the ensuing sections of this article. Every such person, firm, association or corporation before engaging or continuing in the business of buying milk or cream for the purposes aforesaid, shall, annually, on or before August first, file an application with the commissioner of agriculture for a license to transact such business. The application shall state the nature of the business, as hereinabove set forth, the full name of the person or corporation applying for the license, and, if the applicant be a firm or association, the full name of each member of such firm, or association, the city, town or village and street number at which the business is to be conducted, and such other facts as the commissioner of agriculture shall prescribe. The applicant shall further satisfy the commissioner of his or its character, financial responsibility and good faith in seeking to carry on such business. The commissioner shall thereupon issue to such applicant, on payment of ten dollars, a license entitling the applicant to conduct the business of buying milk and cream from producers for the purpose aforesaid at an office or station at

Regulation
in re pur-
chase of
milk and
cream.

License.

Application
require-
ments.

License fee.

M.B. Dec. 29, 1919

the place named in the application until the first day of September next following; provided, however, that if the application be presented in the month of July, and if the applicant so elects, such license may be granted to begin on the first day of September next following and run for a term of one year. A license shall not be issued, however, to any applicant if during the year preceding the filing of the application a complaint from any producer and seller of milk or cream shall have been filed with the commissioner against such applicant for any of the grounds specified in section fifty-seven hereof, and such complaint shall have been established as true and just to the satisfaction of the commissioner after such complaint shall have been investigated by the commissioner in the manner provided by section fifty-six hereof. A license shall not be issued as provided in this section, on and after the taking effect of this section, unless the applicant for such license shall file with the application a good and sufficient surety bond, executed by a surety company, duly authorized to transact business in this state, in a sum not less than five thousand dollars, or shall be relieved from such requirement as provided herein. Such bond shall be approved as to its form and sufficiency by the commissioner of agriculture.

Duration of license.

Ground for refusing to issue license.

Bond.

Such applicant may in lieu of such bond deposit with the commissioner of agriculture money or securities in which the trustees of a savings bank may invest the moneys deposited therein, as provided in the banking law, in an amount equal to the sum secured by the bond required to be filed as herein provided.

Securities in lieu of bond.

The bond required to be filed hereunder shall be given to the commissioner of agriculture in his official capacity and shall be conditioned for the faithful compliance by the licensee with the provisions of this chapter, as hereby amended, and for the payment of all amounts due to persons who have sold milk or cream to such licensee, during the period that the license is in force. The money or securities deposited with the commissioner of agriculture, as above provided, shall constitute a separate fund and shall be held in trust for, and applied exclusively to, the payment of claims against the licensee making such deposit, arising from the sale of milk or cream to such licensee.

Conditions of bond.

Disposition and use of securities.

Default in
payment by
licensee.

Upon default by the licensee in the payment of any money due for the purchase of milk or cream, which payment is secured by a bond or the deposit of money or securities as hereinbefore provided for, the creditor may file with the commissioner of agriculture, upon a form prescribed by him, a verified statement of his claim. If such creditor shall have reduced such claim to judgment or shall thereafter and before the commencement of the action by the commissioner of agriculture, as hereinafter provided for, reduce such claim to judgment, a transcript of such judgment shall also be filed with such commissioner.

Creditor
may
file verified
claim or
transcript
of judg-
ment
with com-
missioner.

Time of
filing.

Such statements may be filed at any time during the period of the license for purchases made during such period and within ninety days from the termination of such period.

Action by
commissioner.

After the expiration of ninety days from the termination of any license period the commissioner of agriculture shall, by proper action wherein all such creditors and any surety upon any bond given as hereinbefore provided for and the licensee shall be parties, proceed to determine the amount due each such creditor, and the judgment rendered in such action shall be enforced ratably for such creditors against the surety on the bond, if one there be, or against the moneys or securities deposited as hereinbefore provided for. If any such creditor shall have reduced his claim to judgment such judgment shall be presumptive proof of the amount due such creditor in any action brought by the commissioner of agriculture as hereinbefore provided for.

Enforce-
ment of
judgment.

Proof of
claim in
judgment.

Applica-
tion of
proceeds
of bond.
First.

Second.

Every bond given pursuant to the provisions hereof shall be applicable, in the first instance, to the payment of all claims arising during the license period for which such bond shall continue, and filed either during such period or within ninety days after the expiration thereof. If all such claims shall be paid the balance available upon such bond shall be devoted to the extinguishment ratably of claims arising during such license period, but for which statements shall not have been filed until after ninety days after the expiration of such period.

Applica-
tion of
money and
securities.
First.

All moneys and securities, deposited as herein provided for, shall be applicable, in the first instance, to the extinguishment of claims, properly filed, arising during the license period for which such moneys or securities were originally deposited and if, after the extinguishment of such claims, there shall be a surplus remain-

ing such surplus shall be devoted to extinguishment of claims arising during any preceding license period which were properly filed as hereinbefore provided, all claims for any one license period to be of a parity. Any surplus remaining after the extinguishment of such prior claims shall be added to the moneys or securities then on deposit with the commissioner of agriculture or, if there be at that time on file with such commissioner a bond given pursuant to this section, or if there be then on deposit with such commissioner additional moneys or securities deposited as herein provided for, and if such bond or such moneys or securities, as the case may be, shall, in the opinion of the commissioner of agriculture, be sufficient, such surplus shall be returned to the licensee.

Second.

Disposition
of surplus.

A person or corporation licensed hereunder shall make a verified statement of his or its disbursements during a period to be prescribed by the commissioner of agriculture, containing the names of the persons from whom such products were purchased, and the amount due to the vendors thereof. Such statement shall be submitted to the commissioner of agriculture when requested by him and shall be in the form prescribed by such commissioner. If it appears from such statement or other facts ascertained by the commissioner of agriculture, upon inspection or investigation of the books and papers of such licensee as authorized by section fifty-six of this chapter, that the security afforded to persons selling milk and cream to such licensee by the bond executed or deposit made by such licensee as herein provided does not adequately protect such vendors, the commissioner of agriculture may require such licensee to give an additional bond or to deposit additional money or securities, to be executed or deposited as above provided, in a sum to be determined by the commissioner, but not exceeding by more than twenty-five per centum the maximum amount paid out by such licensee to sellers of milk in any one month: Provided, however, that the maximum amount of the bond or deposit required from any applicant under the provisions of this section shall be one hundred thousand dollars; and that any applicant filing a bond or depositing money or securities in such maximum amount shall be exempted from filing either the statements of milk purchased, or the statements of disbursements in this section provided for.

Statement
of dis-
bursements.Form of
statement.Additional
bond or
security
may be
required.Maximum
amount.

Exception.

Excep-
tion as
to bond.

If the applicant for a license under this section be a person or a domestic corporation, the commissioner of agriculture may, notwithstanding the provisions of this section, if satisfied from an investigation of the financial condition of such person or domestic corporation that such person or corporation is solvent and possessed of sufficient assets to reasonably assure compensation to probable creditors, by an order filed in the department of agriculture, relieve such person or corporation from the provisions of this section requiring the filing of a bond.

Definitions.

The term "station" or "milk gathering station," as used in this and the ensuing sections of this article, shall include an established office where the business of buying milk or cream as herein provided is carried on, with or without a place or premises in connection therewith for the physical handling of milk or cream. (*As amended by chapter 651 of the Laws of 1915.*)

On com-
plaint or
by his
own
motion.

§ 56. Power of commissioner to investigate. The commissioner and his assistants shall have power to investigate upon the complaint of any interested person, or of his own motion, the record of any person, firm or corporation applying for or holding a license, or any transaction involving the purchase by such applicant or licensee or attempted purchase of milk for shipment as provided in section fifty-five; and for such purpose may examine the ledgers, books of account, memoranda or other documents of any such person, firm, association or corporation applying for or holding a license and may take testimony therein under oath; but information relating to the general business of any such person, firm, association or corporation, disclosed by such investigation and not relating to the immediate purpose thereof shall be deemed of a confidential nature by the commissioner, his assistants, representatives and employees. When a complaint is filed with the commissioner, he shall attempt to secure an explanation or adjustment, and, failing this within ten days, he shall cause a copy of the complaint, together with a notice of the time and place for a hearing thereon, to be served personally or by mail upon said applicant or licensee. If served by mail, such complaint and notice shall be directed to the applicant or licensee at his place of business, with postage fully prepaid thereon. Such service shall be made at least seven days before the hearing. At the time and place appointed for such hearing, the commissioner or his assistants shall hear the parties to the complaint, shall have power to administer oaths and shall enter in the records of the office of

Examina-
tion of
documents.

Adjust-
ment.

Service of
complaint.

Time and
place of
service.

the commissioner of agriculture a decision either dismissing such complaint or specifying the facts which he deems established on such hearing. (*As added by chapter 408 of the Laws of 1913.*) Hearing.

§ 57. **Granting and revoking licenses.** The commissioner of agriculture may decline to grant a license or may revoke a license already granted when he is satisfied of the existence of the following cases or either of them:

1. Where a money judgment has been secured by any milk producer and has been entered against such applicant or licensee and remains unsatisfied of record. Judgment against applicant.

2. Where there has been a failure to make prompt settlements to persons from whom he buys milk, with intent to defraud. Intent to defraud vendor.

3. Where there have been combinations to fix prices. Combinations.

4. Where there has been a continual course of dealing of such nature as to satisfy the commissioner of the inability of the applicant or licensee to properly conduct the business or of an intent to deceive or defraud customers. Intent to defraud customers.

5. Where there has been a continued and persistent failure to keep records required by the commissioner or by law. (*As added by chapter 408 of the Laws of 1913.*) Failure to keep records.

§ 58. **Certiorari to review.** The action of the commissioner of agriculture in refusing to grant a license, or in revoking a license granted under section fifty-five, shall be subject to review by writ of certiorari, and if such proceedings are begun to review the revocation of license, the license shall be deemed to be in full force and effect until the final determination of certiorari proceedings and all appeals therefrom. (*As amended by chapter 651 of the Laws of 1915.*)

§ 59. **Records to be kept.** Every proprietor of a milk gathering station shall keep, in such form as the commissioner of agriculture may prescribe, a record of transactions of purchases of milk or cream by him and he shall, at least semi-monthly, deliver to each person from whom he receives or purchases milk or cream, and in the unit of measure used in computing the amount due therefor, an itemized statement of the several amounts or quantities of such milk or cream so received or purchased at such milk station from such person during the prior half month or, if statements are delivered more frequently than semi-monthly during that period of time which has elapsed since the delivery of such last prior statement. If the milk or cream is purchased or re- Semi-monthly statements.

ceived on a butter fat basis, such statement shall include the percentage, or average percentage of butter fat contained in said milk or cream as determined by tests periodical or otherwise. Every such proprietor of a milk gathering station shall post in a conspicuous place in such milk station, a schedule of the prices being paid for milk or cream including the premiums paid or deductions made, if any, for milk or cream containing milk fat either in excess or in lesser amount than the agreed standard, and shall keep a correct account of all the milk or cream daily received or purchased from each person at such milk station which account shall be open to inspection by said person. (*As amended by chapter 651 of the Laws of 1915.*)

Dissatisfied party
may apply
for investigation.

§ 60. **Right to review.** If either party to the transaction of purchase and sale between a milk producer or a milk seller and a licensed buyer of milk shall be dissatisfied relative to any transaction of purchase and sale of milk between a milk seller and a licensed buyer of milk, he may apply to the commissioner of agriculture, in writing, within sixty days after the delivery of such milk to the licensed buyer, for investigation. The commissioner of agriculture shall treat such application as a complaint, and shall cause a full investigation of the transaction complained of to be made either by himself or one of his assistants, in the manner provided by section fifty-seven. (*As added by chapter 408 of the Laws of 1913.*)

Misdemeanors.

§ 61. **Offenses.** Any person who, being a buyer of milk for shipment for the purposes set forth in section fifty-five, whether such person be licensed or whether his business be transacted at a station or otherwise, shall (a) fail to make prompt payments for milk purchased, with intent to defraud, or (b) shall make any false or misleading statement or statements enumerated in sections fifty-five to fifty-nine inclusive, with intent to deceive, or (c) enter into any combination to fix prices, or (d) not being licensed, shall conduct the business of buying milk for shipment as provided in section fifty-five, or (e) being licensed or otherwise, engages in such business without having a station or office therefor, or (f) fails to conform to any requirement of or violates any provision of sections fifty-five to fifty-nine, inclusive, with intent to deceive a seller of milk, shall be guilty of a misdemeanor. (*As added by chapter 408 of the Laws of 1913.*)

LIBRARY OF CONGRESS

00008957162

Hollinger Corp.
pH 8.5