THE PRESENT STATUS OF LEGISLATION CONCERNING IMITATION AND FILLED MILK
BY
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Florida becomes the third state in the southeast to be attacked on the basis of the constitutionality of their Filled Milk Law, Chapter 502.151.

This in itself gives the opposition to be well prepared and to get more proficient as they gain experience with each battle. So far, in no State, has the Filled Milk Statute been upheld. (Washington, Georgia and Texas have fallen by the wayside). In all cases the States have appealed the decisions of the lower courts with some degree of optimism. I talked to Mr. Adams, Director of the Dairy Division, State of Washington, yesterday and he expressed some degree of optimism and the thought that they should have some decision by June 1, 1968.

We were sued in April by Quality Foods, Inc. of Atlanta -- earlier we were notified by them that they had franchised the State of Florida for Farmer's Daughter and a list of other drinks that they would offer. After considerable correspondence, some of which we have requested samples of the products and examples of labels to be used, we advised them that it appeared useless for our Department to try to communicate with them since we would have to deal with the manufacturer who would be their franchisee in the State of Florida.

Quality Foods, Inc. has requested a panel of three judges to hear arguments of the constitutionality of the Florida Filled Milk Statute.

In the Setzer vs. Mayo Case which was tried before Judge Taylor in Leon County in 1944, he ruled that the Law was constitutional, however, that if the filled milk product was proved to be as nutritious as milk that it could be sold in the State of Florida.

Their strategy in refusing to attack the Federal Filled Milk Statute, is that they create a great deal of publicity from attacking each individual State; and, I was told by one of their representatives that this resulting publicity more than pays for the court costs. In the instance of the Georgia case, the Farmer's Daughter representative estimated that approximately fifty (50) franchises would result, and he did in fact succeed in getting some coverage in SuperMarket News, and, no doubt must have sold some franchises.

The case that they have presented is very similar to the complaint filed in Alabama, where it was placed before a three judge Federal Court.

In view of the above, the Attorney General's Office (in Tallahassee) who will be handling the litigation, asked for a Stay of the Proceedings on May 1, 1968, pending the disposition of the Alabama case. I can only assume that whatever decision is made in the Alabama case, that it will have a great deal of bearing on the outcome of Florida's.

Our Department, sensing the importance of these cases to the dairy industry of Florida and to the people of this State has had representatives at all the recent Hearings. Recently, at the Texas Hearing it was felt that the most significant development was the fact that there were two expert witnesses who testified to their expert knowledge that coconut oil was deleterious to the health of the consumer. The National Dairy Council sent Dr. Marion Brink who did an outstanding job in our estimation in presenting testimony that showed that the filled milk was not as nutritious as the manufacturers have alleged it to be. It appears that Dr. Brink is well informed and up-to-date on research on this particular product. I was real pleased to learn that the dairy industry of the State of Texas and the Dairy Council both cooperated in supporting this legal action financially.
I am pleased to advise you that the Commissioner has received a letter from the Farm Bureau offering their support to help us in this matter. I want to express my appreciation to all of you who have kept us informed, both from the University and from the Industry. We would request from the Industry that they furnish our Division with all the available information which they might have which would enable us to be better informed in the event we had to defend our Statutes in the courts.

It looks like the filled milk interests will now make every attempt to substitute a combination of other vegetable oils with milk in order to eliminate the arguments against using coconut oil. One suggested combination has been soybean, coconut and cottonseed oils.

The opposition presented a pediatrician and a nutritionist (who was eminently qualified). He testified this product should be regulated and not prohibited, and further, he testified, that in any event the filled milk was a more nutritious product than a pure synthetic. The latter statement may have had a great deal to do with the judge's decision in the Texas case.

The Commissioner has charged this Staff with the responsibility to do everything in their power to be as well informed as is humanly possible, and that since we do have a Law on the books that our Division uphold this Law and enforce it until such a time as it would be declared unconstitutional.