



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
HARRISBURG, PA. 17120

ISRAEL PACKEL
ATTORNEY GENERAL

April 2, 1973

Honorable H. Joseph Hepford
Majority Caucus Secretary
House of Representatives
128 Main Capitol
Harrisburg, Pennsylvania

Dear Representative Hepford:

We are informed that Chairman Kapleau of the Milk Marketing Board has been subpoenaed before the Special Committee under HR No. 21. Our understanding is that he is to be questioned about wiretaps of his telephone.

This matter does not relate to any activities of the Pennsylvania Crime Commission so that as Chairman of that Commission, I raise no objection to his appearance before you.

I am informed by the Governor's Office that this matter does not relate to any executive performance of duties by Mr. Kapleau. Hence, there is no reason for our making any determination as to whether executive privilege should be asserted with respect to his appearance before the Committee.

Sincerely yours,

A handwritten signature in cursive script that reads "Israel Packel".

Israel Packel

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APPLICABILITY OF EXECUTIVE PRIVILEGE TO THE MILK MARKETING BOARD

Under Pennsylvania law, it is clear beyond any doubt that the Milk Marketing Board is outside the scope of any claim of executive privilege by the Governor. Executive privilege, if indeed there is any such concept in Pennsylvania law, would appear to be logically limited to agencies whose sole responsibility is to obey the Governor in furtherance of the executive function to enforce the law.

In Snyder v. Barber, 378 Pa. 377, the State Supreme Court held that the Milk Marketing Board, then entitled the Milk Control Commission, is an agent of the General Assembly. The Court noted:

Under the decisions of this Court, a member of the Milk Control Commission is not a public officer under Section 13 of Article III of the Pennsylvania Constitution and is, therefore, not subject to the limitations of salary referred to therein. The functions performed by the Milk Control Commission, from a governmental point of view, are not unlike those devolved upon the Public Utility Commission ... This case held that the Commission was in effect a committee created by the Legislature "to do a certain part of its work." Further that public service commissioners must be viewed as deputies of the General Assembly to perform legislative work.

Smiley v. Heyburn, 389 Pa. 596, a case dealing with the Pennsylvania Labor Board also took note of legislative nature of the Milk Marketing Board:

In addition to the fact that the Legislature had the power to abolish the Milk Control Commission, it is not to be overlooked that the Commission was performing a function on behalf of the Legislature....

The primary function...was rate-making, an admittedly rate-making function.



Applicability of Executive Privilege to the Milk Marketing Board - 2

Case law has been supplemented by opinions of the Attorney General. In 1957, an opinion by Thomas McBride, Attorney General during the Administration of Governor George Leader, stated:

The exclusion of the legislative branch applies not just to such an obviously legislative body as the General Assembly; it applies equally to the Public Utility Commission and to the Milk Control Commission, both of which are agents of the Legislature.

On October 25, 1961, an opinion by David Stahl, Attorney General during the Administration of Governor David Lawrence, also took note of the legislative character of the Milk Marketing Board.

A research of recent case and statutory law confirms the fact that this remains the law in Pennsylvania.

EDWARD HUSSIE



BELL OF PENNSYLVANIA

For more information, contact:
James H. Smith, News Supervisor
Phone: 236-9559 (21.)
March 22, 1973

The Bell Telephone Company said today Pennsylvania State Police were notified promptly when a "foreign attachment" was found last September in the phone service of the State Milk Marketing Board chairman's office complex.

H. C. Armstrong, Bell's Central Area security manager in Harrisburg, explained that telephone company personnel found the device while responding to a routine maintenance repair call.

The discovery occurred in the office area of Harry C. Kapleau in the State Agricultural Building at 2301 North Cameron St., Harrisburg.

Armstrong also said:

"In a case of this type, the telephone company's policy is to turn over all information and any foreign attachments to the appropriate police jurisdiction.

"Consequently, since state government telephone service was involved, we immediately turned over the device and information as to its discovery to the State Police.

"That was the end of the Bell Telephone Company's participation in this matter, and any other details must be obtained from the State Police."

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"We stand ready to check the phone service of any customer who has reasonable cause to believe that illegal use is being made of that service.

"Over the years, such requests have been made by state government officials. Thorough investigations were made and the results, which never disclosed illegal attachments, were reported to the proper state authorities.

"However, while there are no specific time schedules for such investigations, checks of this type have been made in the Governor's office and several other state agencies in the past three months."

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