



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

July 18, 2018

via email only to deberly@pa.gov

Robert N. Barley, Chairman
PA Milk Marketing Board
c/o Doug Eberly, Chief Counsel
2301 N. Cameron Street
Harrisburg PA 17110

RE: PAMD correspondence of July 18, 2018

Dear Mr. Eberly:

I am writing to simply state the position of the Pennsylvania Department of Agriculture that in the above-referenced correspondence PAMD's reliance on §404 of the Milk Marketing Law is misplaced in claiming the maximum time period for a notice of termination can only ever be 45 days.

- §404 is expressly not applicable to a milk dealer terminating a contract. Inclusion of the phrase ". . . except where the contract has been lawfully terminated . . ." establishes that.
- Reading §404's language establishes that it applies to situations where a dealer is "rejecting milk delivered or made available in ordinary continuance of a previous course of dealing" without reasonable notice of the intent to do so.
- While §404 is expressly not about terminations, 7 Pa. Code §143.31 is expressly about terminations.
- There is clearly a difference in terminology used by the Pennsylvania General Assembly in writing §404 and the Pennsylvania Milk Marketing Board in promulgating 7 Pa. Code §143.31. That difference must be ascribed some meaning.
- **If the "reasonable advance notice" referenced in §404 of the law was the same thing as the "notice of termination" of contract under 7 Pa. Code §143.31, then §404's phrase "except where the contract has been lawfully terminated" has no meaning nor purpose whatsoever for being included in the law and, in fact, must be ignored to adopt the PAMD's reasoning.**

- The tenants of statutory construction dictate that attributing no meaning to statutory language, and ignoring its existence to reach a desired interpretation, is not appropriate.
- Accordingly, the language of §404 of the Milk Marketing Law does not have the effect of limiting to 45 days the amount of time the PMMB can establish by regulation as the required notice of termination of a dealer contract or purchasing agreement with a producer.

Thank you for the opportunity to set forth our position.

Sincerely,



Brook Duer
Chief Counsel

DHD/dhd

Cc: Russell C. Redding, Secretary