

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 80-209
	:	
of	:	<u>May 28, 1980</u>
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SUBJECT: FARM PRODUCTS TRUST FUND—One who contracted to sell farm products to a licensee but delivered the products after the license was surrendered, revoked or for other reasons was not then effective, may be paid from the Farm Products Trust Fund.

The Honorable R. E. Rominger, Director, Department of Food and Agriculture, has requested an opinion on a question which we have phrased as follows:

May one who contracted to sell farm products to a licensee but delivered the products after the license was surrendered, revoked, or for other reasons was not then effective, be paid from the Farm Products Trust Fund?

CONCLUSION

One who contracted to sell farm products to a licensee but delivered the products after the license was surrendered, revoked or for other reasons was not then effective, may be paid from the Farm Products Trust-Fund.

ANALYSIS

Effective September 17, 1977, the Legislature created the Farm Products Trust Fund ("Fund").¹ As set forth in Assembly Bill No. 1980, the Fund was created as the then existing procedures requiring the bonding of processors of and dealers in farm products (buyers) were ineffective in protecting farm product producers (sellers) in situations where processors or dealers encountered financial difficulties.² Consequently, the bonding procedures were repealed and the Fund procedures enacted in an attempt to remedy the situation. Food and Agricultural Code section 56705,³ sets forth the basis mechanics of this program:

"If a person licensed under Chapter 6 (commencing with Section 55401 [dealing with processors of farm products and their agents]) or Chapter 7 (commencing with Section 56101 [dealing with commission merchants, dealers, brokers, cash buyers and their agents]) of this division fails to pay for any farm product which is received by such licensee, the director shall ascertain the names and addresses of all farm products creditors together with the amounts which are due and owing to them and each of them by such licensee and shall request all such farm products creditors to file a verified statement of their respective claims with the director. The request shall be addressed to each creditor at his last known address. If by reason of the absence of records, or other circumstances which make it impossible or unreasonable for the director to ascertain the names and addresses of all such farm products creditors, the director, after exerting due diligence and making reasonable inquiry to secure such information from all reasonable and available sources, may make demand upon the products fund on the basis of information then in his possession, and thereafter is not liable or responsible for claims or the handling of claims which may subsequently appear or be discovered." (Emphasis added.)

Section 56704 states that the "money deposited in the product fund shall only be used to pay for farm products grown or produced within the state, which have not been otherwise paid for"

¹ Food and Agricultural Code section 56701 *et seq.*

² Statutes of 1977, chapter 876, section 7, pages 2641-2642.

³ All unidentified code references are to the Food and Agricultural Code.

The seller is a member of the class intended to be protected by the provisions discussed herein. The protective purpose of this legislation should not be thwarted by the actions of the class to be deterred. (*Cf. Homestead Supplies, Inc. v. Executive Life Insurance Company* (1978) 81 Cal. App. 3d 978, 992-993.)

Section 56707 provides:

“Upon ascertaining all claims and statements against a respondent *licensee*, the director shall pay, up to the amount specified in Section 56708, from the products fund to claimants, in accordance with the provisions of this chapter and all the following terms and conditions:

“(a) Such claimants shall have filed a verified complaint with the department.

“(b) The amount due such claimants has been determined by an audit or investigation by the department.

“(c) The amount due is not disputed by the licensee and is approved by the department or, if the claim is disputed or not agreed to by the parties, the claim shall be adjudicated by an administrative hearing and a decision rendered pursuant to Section 55749 or 56447 specifying the amount due the creditors.” (Emphasis added.)

Sections 56705 and 56707, quoted in full above, refer specifically to licensees. Similarly, sections 56708, 56710, 56713 and 56715 also refer to licensees. It is interesting to note that these sections do not use “person” but specifically refer to “licensee.” Played against but in the same vein as the language referred to above is the language of section 56711 which provides:

“No creditor’s claim shall be paid under this chapter if the claim is based on a transaction with a *person who was not subject to the provisions of this chapter at the time of the transaction.*” (Emphasis added.)

Under the provisions of section 56705, the machinery of the Fund does not begin to function until “a person licensed” under other chapters “fails to pay for any farm product.” Therefore, a person is only “subject to the provisions of this chapter” if he or she is licensed at the time of the transaction and fails to make payment. (§ 56705.) This interpretation is reinforced by section 56703 which states that the “chapter does not apply to any licensee who pays to the seller the full agreed purchase price in coin or currency.” Thus, under section 56711, a “person” must have been “subject to the provisions of this chapter” (licensed) “at the time of the transaction” to subject the Fund to liability. We must determine, then, at what point in time a “transaction” occurs. Some indication of what the legislature intended can be wrung from section 56703 which provides:

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“This chapter does not apply to any licensee who pays to the seller, at the time of obtaining title, possession, or control, or at the time of contracting for the title, possession, or control, of any farm product, the full agreed purchase price of such farm product in coin or currency, lawful money of the United States” (Emphasis added.)

If “the full agreed purchase price” were deferred and, thus, not paid at the time of “contracting for the title, possession, or control,” the Fund provisions would then apply under section 56705 if the licensee failed to make full payment. The reference to “contracting for the title, possession, or control” clearly contemplates a time period between the contract and the delivery or receipt in order for section 56703 to have any significance at all. It is such a transaction, then, that is covered by section 56711. The “time of the transaction” is the time the legal obligations of the parties became fixed and binding on both. Thus, under the facts presented, the “time of the transaction” is the time the contract is made. Accordingly, we conclude that the person receiving the goods need only be licensed at the time of contracting for title, possession or control of such goods for the sellers thereof to be eligible to be paid from the Fund.⁴

⁴ It is noted that no claim can be made against the Fund when a claim against a licensee is covered by a bond. (§ 56715.) Furthermore, under section 56715 bonds issued under former sections 5551 *et seq.* and 56221 *et seq.* are valid only “until the expiration of the current license.”