SFChronicle

JUN 6 1974

14 San Francisco Chronicle ★ Thurs., June 6, 1974

Super Co-Ops --The Dairy Empires

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Los Angeles Times

Washington

Armed with a special antitrust exemption and massive political war chests, a new breed of business organization has emerged in the dairy industry to gain a near-monopoly on milk supplies in some regions of the country.

Called the super co-op, these new dairy empires have been built in less than a decade through rapid-fire consolidation of local farm marketing co-operatives, formed to market milk more effectively for individual farmers.

The growth of the co-ops and their transformation from simple, local bargaining organizations into corporate style giants is being spotlighted this week as the House Judiciary Committee focuses its impeachment inquiry on dairy industry campaign contributions to President Nixon.

The central issue for the committee is whether the co-ops were able to buy an increase in federal milk price support levels through their campaign pledges. For the consumer, however, an issue that will likely outlive the impeachment controversy is whether the co-ops have managed to obtain sufficient control over milk supplies to force up prices while they use their political muscle to avoid government attack.

The super co-ops operate under the protective umbrella of the Capper-Volstead Act, a special antitrust exemption passed in 1922 to strengthen farmers' hands in dealing with milk processors.

The co-ops' massive growth has been accompanied by a decline in milk production and by a 40 per cent increase in raw milk prices in the past two years alone. Co-op leaders say these trends reflect the high cost of dairying, including the price of feed, that has driven many farmers out of the business. Many others, however, say the trends also reflect the power of the co-ops.

"The aggregation of the co-ops into regional organizations with 80 to 90 per cent of the milk supply has created a price enhancement over a ten-year period," maintains C. Jack Pearce, a former federal antitrust specialst and Nixon administration White House official who has represented some dairy interests.

"The co-ops have gotten control way beyond what was intended" by the Capper-Volstead exemption, he adds.

Changing that exemption, of course, would take an act of Congress, raising the question of the political influence of the co-ops all the more.

"Because they've been such big contributors, Congress has left them alone," insists one Senate expert who asked not to be indentified.

In testimony on food prices before the monopoly subcommittee of the House Judiciary Committee last year, the Justice Department recommended that the legislators consider changing the law. In the wake of those hearings, the subcommittee's staff drafted a report recommending such action. But amid co-op opposition, a final draft was never written.

Justice Department officials disagree among themselves about trying to apply the antitrust laws without help from Congress. "There are two schools of thought here — one that co-op mergers are not immune and that we should challenge them," says Keith I. Clearwaters, deputy assistant attorney general for antitrust. "The other is that it would be a futile act" — that if co-ops couldn't merge, the farmers could simply disband one co-op and join another, creating the same result.

Clearwaters says he favors challenging the mergers. So did a number of lesser Justice Department officials who sought to block an alliance of three co-ops in the Great Basin region of Utah, Idaho, Wyoming, Colorado and Nevada in 1971 and 1972.

Despite complaints that the alliance would create an organization commanding 90 per cent of the region's milk supply and the fact that two of the parties to the agreement had previously been involved in a price-fixing case, the department ultimately decided not to pursue the matter.

The Justice Department will not answer questions about who made the final decision in that matter or whether the issue was ever brought to the attention of Attorney General John N. Mitchell before he left to head President Nixon's re-election campaign in March, 1972.

Mitchell's name is mentioned in connection with an alleged effort by another milk co-op; San Antonio-headquartered Associated Milk Producers, Inc., the nation's biggest, to soften the blow of a federal antitrust suit.

Watergate special prosecutor Leon Jaworski is known to be investigating whether then Treasury Secretary John B. Connally received a $10,000 payment from a representative of Associated Milk Producers in March of 1972 and called Mitchell to enlist his aid on behalf of the co-op. By that time, of course, Mitchell had resigned as attorney general. Connally has denied he received any money.

Capper-Volstead provides one avenue for anti-monopoly attack against the co-ops. The secretary of Agriculture is empowered to act if he believes prices have been "unduly enhanced." The power has never been used.

The Justice Department does have civil suits pending against three big co-ops — Associated Milk Producers, Mid-America Dairymen, Inc., Springfield, Mo., and Dairymen, Inc., Louisville, Ky. — asking federal courts to halt a number of alleged anti-competitive practices.

In none of the cases, however, has the Justice Department met the Capper-Volstead issue head on by seeking to break up or halt further mergers of the co-ops.

One problem facing any antitrust drive is to translate charges of monopoly into specific effects on milk prices.

The Federal Trade Commission, in a study it has been willing to make public only in part, has suggested that monopoly practices in the milk industry have resulted in overcharges to consumers amounting to more than $250 million a year, or roughly three per cent more than the price would have been otherwise. FTC officials claim the study is based on some untested assumptions.

Whatever the monopoly consequences of co-op growth, the investigations into political contributions have served to raise questions about whether farmers have adequate control over the affairs of the big organizations.

Some farm experts are concerned about the efficiency of some of the big co-ops and whether any extra price they are able to command ever really benefits the individual farmer. So far, however, there's little indication of widespread dissatisfaction among farmers.

Meantime, there's no evidence of any move in Congress to stem co-op growth.