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Understanding Capper-Volstead



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Understanding Capper-Volstead

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There are essentially two keys to understanding the basic meaning of the Capper-Volstead Act and its special implications for agricultural producers, associations of producers, and the general public.

The first key appears in the act's very first sentence: "...**may** act together...." After passage of the act, farmers could lawfully unite to collectively market their products. Before the Capper-Volstead Act became a law, farmers were being prosecuted for acting together to market their products.

One has only to imagine the chaos that could take place if the important key to collective action "...may act together..." were eliminated. This would be the case if the Capper-Volstead Act were repealed. It would simply mean, for example,

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that one egg producer could not join with another egg producer to agree on prices and fix prices at which they would sell their product to a buyer. A court could find that these two producers were eliminating competition by conferring about the price they proposed to seek from a chainstore buyer. One can appreciate how, in this modest example, the whole concept of countervailing bargaining power would be lost if Capper-Volstead were repealed.

Also, a particular group of producers may act together not only through their own association but also by joining with other associations of producers to have a common marketing agency.

Thus, it is said the Capper-Volstead Act provides limited antitrust exemption to associations of producers; such limited exemption comes about by legally permitting reduction of competition among farmers when they join and act in the marketplace, in effect, as one farmer.

The act establishes certain conditions associations of producers must meet to qualify for such limited exemption. An association must meet the following two conditions:

1. It must be operated for the mutual benefit of its members insofar as they are producers of agricultural products.

2. It must not deal in the products of nonmembers in an amount greater in value than such products that it handles for its members.

In addition to the foregoing requirements, an association has a choice of conforming to one or both of the following requirements:

1. No member of an association is allowed more than one vote because of the amount of stock or membership capital owned.
2. The association does not pay dividends on stock or membership capital in excess of 8 percent per year.

Let us assume, therefore, that farmers have organized an association of producers that meets these requirements to collectively market their product. That association, as an entity engaged in business transactions, is as answerable to the antitrust laws as any other firm engaged in business transactions.

Thus, if an association of producers

- engages in predatory practices
- engages in price discrimination

- restricts members' agricultural output
- coerces competitors or customers
- colludes with third parties to fix prices
- conspires with third parties to fix prices
- combines with other firms to substantially lessen competition — engages in boycotts
- it may find itself just as subject to prosecution for being in violation of the anti-trust laws as would any other firm that engaged in such practices.

The second key to understanding Capper-Volstead is found in answering this question: What protection do consumers and the general public have against monopolization and restraint of trade?

Section 2 of the act deals with the potential problem of misuse of monopoly power. It states that if an association should monopolize or restrain trade to the extent that it unduly enhanced prices of agricultural products, then legal remedies can be invoked to cause the association to "...**cease** and desist from monopolization or restraint of trade."

The Capper-Volstead Act, like many other pieces of legislation, does not completely and exhaustively define and interpret the language included in its provisions. For example, although the act specifies that only agricultural producers "may act together," thus serving to restrict an association's membership to producers, it does not define an agricultural producer.

It does not define such fundamental words as "marketing." Nor does it clarify what is meant by "undue enhancement of price." As a matter of fact, the act does not even use the word "cooperative." And the implications of the mutuality concept have not been fully explored.

Further, it is not an enabling statute under which cooperatives organize, although it does include requirements to which associations of producers must conform to get the benefits of limited exemption.

Because so many of these basic issues remain open to interpretation in an era where questions are being raised about mergers, consolidations, and joint ventures between marketing cooperatives as well as noncooperative agribusiness corporations, bloc voting, nonfarmer board members, the use of subsidiaries owned jointly by cooperatives and the investing public, and the like, one can reasonably ask if Capper-Volstead is relevant to the times.

The answer is “yes” when one considers Capper-Volstead as a basic piece of legislation that contains essentially two key provisions:

1. It permits farmers to get together to collectively market their products which, in the absence of such an enabling provisions, could result in antitrust action against them.
2. It protects the general public against the possibility of undue price enhancement as a result of any monopoly position that a group of producers could legally achieve by getting together.

The Capper-Volstead Act is continually under review by and subject to administrative and court interpretation. Farmer cooperatives that engage in marketing activities should make every effort to act responsibly in conforming with the letter and spirit of the law.

The Capper-Volstead Act

(Public-No. 146—67th Congress)

An Act to Authorize Association of Producers of Agricultural Products

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes: Provided, however, That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

And in any case to the following:

Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

Sec. 2. That if the Secretary of Agriculture shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Agriculture may prescribe, reduced to writing and made a part of the record therein. If upon such hearing the Secretary of Agriculture shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural produce is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade. On the request of such association or if such association fails or neglects for thirty days to obey such order, the Secretary of Agriculture shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the

order and of all the records in the proceeding, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may,; for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Agriculture and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review therein the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court may, upon conclusion of its hearing, enforce its decree by a permanent injunction forbidding such association from violating such order or any part thereof. The court may, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer or agent thereof engaged in carrying on its business, or any attorney authorized to appear in such proceeding for such association, and such service shall be binding upon such association, the officers, and members thereof.

Approved, February 18, 1922. (42 Stat. 388) 7 U.S.C.A., 291-192