

New Zealand.



ANALYSIS.

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1933, No. 19.—*Local and Personal.*

AN ACT to establish a Milk Council for the Auckland Metropolitan Area and to prescribe its Powers and Functions. Title.
 [22nd December, 1933.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Auckland Metropolitan Milk Act, 1933. Short Title.

2. In this Act, unless the context otherwise requires,— Interpretation.

“Council” or “Milk Council” means the Auckland Metropolitan Milk Council constituted under this Act:

“Dairyman” means the occupier of any dairy or dairy premises:

Sec. 2 def.³

“Dairy” or “dairy premises” means any land or premises used for or in connection with the stalling, grazing, feeding, or milking of cows for the purpose of producing milk:

*1935 h^o 17**

“District” or “milk district” means the Auckland Metropolitan Milk District as for the time being subsisting:

“Gallon” in relation to milk means a quantity of milk weighing ten decimal thirty-three pounds avoirdupois:

“Financial year” means the period from the first day of April in any year to the thirty-first day of March in the next following year, both days inclusive:

“Milk” includes cream and refers only to milk or cream which is sold or to be sold for consumption or use as such or for the manufacture of ice-cream within the milk district:

“Milk-store” means any building, shed, or place at or upon which milk is treated, deposited, or stored, and includes any building or premises within the milk district at or upon which milk is sold:

“Milk-vendor” means any person who is the occupier of a milk-store, or who himself or by his employee receives or accepts milk to be

forwarded or supplied to the milk district otherwise than as a carrier, or who sells milk therein; and also includes any company engaged as such:

“Prescribed” means prescribed by resolution of the Council:

“To sell” means to sell by wholesale or by retail, and includes barter, the supply for profit, offer for sale, receive for sale, have in possession for sale, expose for sale, send forward or deliver for sale, cause or suffer or allow to be sold, offered, or exposed for sale, and refers only to selling for human consumption; and “sale” and “sold” have corresponding meanings:

“Treatment” includes the examination, cleansing, pasteurization, modification, testing, grading, cooling, refrigerating, bottling, or packing of milk; and “treat” has a corresponding meaning.

3. (1) The City of Auckland, together with the Boroughs of Mount Eden, Onehunga, Mount Albert, Newmarket, One Tree Hill, Devonport, Takapuna, Northcote, and Birkenhead, the Town District of Ellerslie, and the Road District of Mount Roskill, shall, for the purpose of this Act, form one district, to be known as the Auckland Metropolitan Milk District.

(2) The Governor-General may at any time and from time to time, by Proclamation, on the petition of the Council, alter the boundaries of the milk district by including therein or excluding therefrom any area, and may by the same or a like Proclamation made on the like petition make any necessary consequential provision for variation in the procedure for the election of members of the Council.

4. (1) There shall be for the milk district a Milk Council constituted as hereinafter provided.

(2) The Council shall be a body corporate under the name of the Auckland Metropolitan Milk Council, and shall have perpetual succession and a common seal, with power to purchase, take, or lease, hold, deal with, and dispose of by sale, lease, or exchange real and personal property, and to do and suffer all that bodies corporate may lawfully do and suffer.

(3) The Council shall be deemed to be a local authority under the Public Works Act, 1928, the Local Bodies'

Auckland
Metropolitan
Milk District
constituted.

*Sec. 3 amds.
1935 W.P. 17**

Auckland
Metropolitan
Milk Council
established.

*Sec. 4 (3) amds.
1935 W.P. 17**

Loans Act, 1926, the Local Government Loans Board Act, 1926, Part XV of the Public Revenues Act, 1926, and the Local Elections and Polls Act, 1925.

5. (1) The Council shall consist of nine members.

Constitution
of Council.

(2) Subject to the special provision hereinafter contained as to the appointment of the members of the first Council, the Council shall consist of three members appointed by the Auckland City Council, two members elected by the local authorities within the district (other than the Auckland City Council), two members elected by milk-vendors selling not less than ten gallons of milk a day in the district, and two members elected by dairymen producing not less than ten gallons of milk a day for sale in the district.

Sec. 5 affected:
1925 h. 17 *

6. (1) The members of the first Council shall be appointed by the Governor-General on the recommendation of the Minister of Industries and Commerce as follows:—

First members
of Council.

(a) Three members on the recommendation of the Auckland City Council:

(b) Two members to represent the other local authorities within the district, to be appointed after consultation by the Minister with the said local authorities:

(c) Two members being milk-vendors to represent the milk-vendors, to be appointed after consultation by the Minister with such persons or bodies as he thinks fit:

(d) Two members being dairymen to represent the dairymen, to be appointed after consultation by the Minister with such persons or bodies as he thinks fit.

(2) No person having any pecuniary interest in the production, treatment, distribution, or sale of milk shall be eligible for appointment under paragraph (a) or paragraph (b) of the last preceding subsection.

7. The members of the first Council shall hold office until the members first appointed and elected under the next succeeding section come into office.

Term of office of
first members.

8. (1) In the month of February, nineteen hundred and thirty-five, and in the same month in every second year thereafter, in each case on a day fixed by the Council in that behalf,—

Election of
subsequent
members.

Sec. 8 affected:
1925 h. 17 *

- (a) The Auckland City Council shall hold a meeting and appoint three persons to be members of the Council :
- (b) The other local authorities of the district shall elect two persons to be members of the Council :
- (c) The milk-vendors selling milk by retail within the district shall elect two persons to be members of the Council :
- (d) The dairymen producing milk for sale within the district shall elect two persons to be members of the Council.

(2) No person having any pecuniary interest in the production, treatment, distribution, or sale of milk shall be eligible for appointment under paragraph (a) or paragraph (b) of the last preceding subsection.

(3) With respect to every election of members by local authorities pursuant to paragraph (b) of subsection one hereof, or pursuant to section eleven hereof, the Council shall make all necessary arrangements for and conduct such election, and each local authority shall be entitled to nominate one candidate and to exercise one vote for each one thousand or part thereof of the population of its district. A certificate by the Government Statistician as to the population of the district of any such local authority as at the first day of January in the case of an election pursuant to the said paragraph (b), or as at the first day of the month in which the election is to be held in the case of an election pursuant to the said section eleven, shall be conclusive as to the population of any such district for the purposes of this subsection.

(4) With respect to every election of members by milk-vendors and dairymen respectively, the following provisions shall apply :—

(a) Subject to subsection six hereof, the Council shall prepare separate electors rolls for milk-vendors and dairymen respectively, and make all arrangements for and conduct such election :

(b) No milk-vendor or dairyman selling or producing for sale in the district less than ten gallons of milk a day shall be entitled to be enrolled as an elector, and no dairyman whose dairy is more than fifteen miles in a straight line from the Chief Post Office at Auckland shall be entitled to be so enrolled :

*Sec. 8 (4) (b) amend :
1935 22.17 **

- (c) Every milk-vendor or dairyman selling or producing for sale in the district not less than ten and not more than fifty gallons of milk a day shall be entitled to exercise one vote :
- (d) The quantity of milk sold by a milk-vendor or produced for sale by a dairyman shall be his average daily sale or production, as the case may be, during the months of June, July, and August last past :
- (e) Every milk-vendor or dairyman selling or producing for sale in the district more than fifty gallons of milk a day shall be entitled to exercise one vote for each fifty gallons or part of fifty gallons of milk so sold or produced for sale by him, with a maximum of five votes.

(5) With respect to every electors roll as aforesaid prepared for the purposes of an election pursuant to subsection one hereof, the following provisions shall apply :—

- (a) The Council shall take such steps and give such notices as may be reasonably necessary to enable all persons entitled in that behalf to be enrolled thereon and to enable objections to be lodged as hereinafter provided :
- (b) The roll shall contain the name, address, qualification, and number of votes of every milk-vendor or dairyman, as the case may be, entered thereon and the number of votes to which he is entitled :

Provided that a person or company being both dairyman and milk-vendor shall have his name included in either the roll of dairymen or the roll of milk-vendors, but shall not be included in both rolls :

- (c) The roll shall be completed and open for inspection at the offices of the Council not later than one month before the day fixed for the election in respect of which it is prepared :
- (d) Any person may, within the time limited by the Council in that behalf, lodge with the Council an objection in writing to the roll on the grounds that any person whose name is on the roll does not possess the qualification by

virtue of which he was enrolled, or that any person whose name does not appear on the roll possesses the necessary qualification and is entitled to be enrolled, and the Council shall forthwith inquire into and dispose of such objection:

(e) Any person aggrieved by any decision of the Council touching the electors roll may appeal therefrom to a Magistrate in the same way as if the electors roll mentioned in this section were an electors list or roll prepared under the provisions of the Municipal Corporations Act, 1920, and the provisions of the said Act or any provisions substituted therefor and of all regulations thereunder shall, *mutatis mutandis*, extend and apply accordingly:

(f) The roll shall be deemed to be closed at five o'clock in the afternoon of the fourteenth day preceding the day fixed for the election, and thereafter until the completion of the election no alteration or addition to or removal from the roll shall be made save to give effect to any decision of the Council in respect of any objection duly lodged within the time limited as aforesaid for the lodging of objections.

(6) Every roll prepared for the purposes of an election pursuant to subsection one hereof shall, with such alterations thereof, additions thereto, or removals therefrom, as may from time to time be necessary, which the Council is hereby authorized to make, be the roll for an election to fill any vacancy pursuant to section eleven hereof occurring before the next election to be held pursuant to the said subsection one. The provisions of paragraphs (d), (e), and (f) of the last preceding subsection shall apply in respect of the roll for the purposes of any such election pursuant to section eleven hereof.

(7) Any election under this section or under section eleven hereof may, if the Council so determines, be conducted by means of a postal ballot in such manner as the Council may determine.

(8) The Secretary of the Council, or such other officer as the Council approves in that behalf, shall be the Returning Officer for any election under this Act.

(9) Subject to the provisions of this Act, the Local Elections and Polls Act, 1925, shall apply to every election under this Act.

9. (1) Every member of the Council appointed or elected under subsection one of the last preceding subsection shall come into office on the first day of February in the year in which he is so appointed or elected, and, unless his office sooner becomes vacant, shall continue in office until members appointed or elected at the next appointment or election under that subsection come into office.

Term of office
of elected
members.

Sec. 9 (1) rep.
1735 h/17*

(2) Every member appointed or elected to fill any vacancy pursuant to section eleven hereof shall come into office on the day following that on which he is declared to be elected, and shall hold office only for the residue of the term for which his predecessor was appointed or elected.

10. (1) The office of a member shall become vacant if he—

Vacancies.

(a) Dies ; or

(b) Resigns his office by writing under his hand delivered to the Secretary or Chairman of the Council, or is ousted of his office ; or

(c) Becomes of unsound mind ; or

(d) Is convicted on an indictment, or is sentenced by the Supreme Court on a plea of guilty, to any charge of an indictable offence, or is sentenced by the Court for any offence, to imprisonment without the option of a fine, or to reformatory detention under any Act ; or

(e) Is absent without leave from four consecutive meetings of the Council ; or

(f) Accepts any paid office or place of profit under the Council ; or

(g) Being a representative of milk-vendors or dairy-men ceases to be a milk-vendor or dairyman, as the case may be.

(2) Any vacancy occurring under this section shall be deemed an extraordinary vacancy.

11. In the event of an extraordinary vacancy occurring within three months of the time when the member whose seat has been vacated would have retired the same shall be filled by the Council, and in other cases an

How vacancies
filled.

appointment or election shall be made or held by the local authority or the electors represented by the member whose seat has been vacated.

Ouster of office.

12. (1) Upon proof in the first instance by affidavit or otherwise that any member of the Council is or has become incapable under this Act of holding his office, any Magistrate's Court in the district may grant a summons calling upon the person holding such office to show cause why he should not be adjudged to be ousted of the same.

(2) If on the return of such summons it appears to the Court, on affidavit or oral evidence on oath, that such person is incapable under this Act of holding the said office, the Court may adjudge such person to be ousted of the same, and such person shall be ousted of such office accordingly.

(3) In any such proceeding the Magistrate's Court may exercise all the powers and authorities which it may exercise in its ordinary jurisdiction in civil cases, and the procedure of such Court shall, so far as applicable, apply generally to proceedings had under this section.

(4) No matter in relation to a disputed election shall be heard by the Magistrate's Court under this section.

(5) No question which may be tried under this section shall be tried in the Supreme Court; and no proceedings in the Magistrate's Court hereunder shall be removable into the Supreme Court by certiorari or otherwise.

Chairman of Council.

13. (1) The Council shall at its first meeting, and thereafter at its annual meeting, in each year elect one of its members to be Chairman of the Council.

(2) At every meeting for the election of Chairman the Secretary shall preside while the Chairman is being elected, or if there shall be no Secretary, then some person appointed by the Council not being a member of the Council shall so preside, and in case of an equality of votes shall determine the election by lot in such manner as the Council determines.

(3) The Chairman shall come into office on his election, and shall hold office until the election of his successor.

(4) The Chairman may resign his office by writing under his hand delivered to the Secretary, and in such case, or in the case of his ceasing from any cause to be a member of the Council, his office shall become vacant,

and the Secretary shall forthwith convene a meeting of the Council for the election of a fresh Chairman.

(5) The Council may from time to time appoint one of its members to be Deputy Chairman either for a specified period or until the next annual meeting of the Council.

14. The Chairman may be paid out of the funds of the Council such annual allowance as may from time to time be fixed by the Council, with the approval of the Minister of Industries and Commerce, but not exceeding an annual sum of two hundred and fifty pounds, but no alteration in the amount of the allowance shall take effect during the term of office of the Chairman for the time being. For the purposes of this section a person re-elected Chairman shall be deemed a new Chairman.

Allowance to
Chairman.

15. The first meeting of the Council shall be held within one calendar month of the date of its appointment by the Governor-General pursuant to section six hereof, and shall be convened by the Town Clerk of the City of Auckland at such time and place as he may appoint, and if no quorum is present within half an hour of the time fixed for the holding of such meeting the same shall stand adjourned from day to day at the same time and place until a quorum is assembled.

First meeting
of Council.

16. (1) The Council may from time to time appoint standing or special committees, and may delegate to such committees any matters for consideration or inquiry or management or regulation, and may delegate to any such committee any of the powers and duties by this Act conferred or imposed upon the Council, but no committee shall be entitled to exercise any of the powers of the Council in relation to prescribing the prices of milk or as to granting or revoking licenses.

Committees.

(2) Every committee to which any powers or duties are delegated as aforesaid may without confirmation by the Council exercise or perform the same in like manner and with the same effect as the Council could itself have exercised or performed the same.

(3) Every such committee shall be subject in all things to the control of the Council, and shall carry out all directions, general or special, of the Council given in relation to such committee or its affairs.

(4) The Council may from time to time discharge, alter, continue, or reconstitute any committee appointed by it.

(5) Every committee shall, unless sooner discharged by the Council, be deemed to be discharged on the coming into office of the members appointed or elected under subsection one of section eight hereof next after the appointment of the committee.

Proceedings of Council and Committees.

Chairman of meetings.

17. At every meeting of the Council the Chairman (if present), or in his absence the Deputy Chairman (if any), shall be the Chairman. If the Chairman and the Deputy Chairman (if any) are absent from any meeting of the Council, then such member as the members of the Council then present choose shall be Chairman of such Council meeting.

Quorum of Council and committees.

18. (1) A quorum of the Council shall consist of five members.

(2) The Council may fix the quorum of any committee appointed by it, and in default of its so doing the committee may fix the quorum.

(3) A meeting shall be duly constituted if a quorum is present thereat, whether voting or not.

Questions to be decided by majority of votes.

19. (1) All acts of the Council and of any committee, and all questions before the Council or any committee, may be done and decided at a meeting of the Council or committee by the majority of such members of the Council or committee as are present and vote at such meeting.

(2) The Chairman of any meeting of the Council or of any committee shall have a deliberative vote, and in case of equality of votes shall have a casting-vote also.

Proceedings not invalidated by irregularities, &c.

20. No act or proceeding of the Council or of any committee, or of any person acting as a member of the Council, shall be invalidated in consequence of there being a vacancy in the number of the Council at the time of such act or proceeding, or of the subsequent discovery that there was some defect in the election or appointment of any person so acting, or that he was incapable of being such member.

Ordinary and annual meetings.

21. (1) The Council shall hold such ordinary meetings at such times and at such places as it from time to time appoints.

(2) The Chairman or the Secretary shall give the prescribed notice in writing to each of the members of the time and place appointed from time to time for

holding ordinary meetings, and the members shall attend such meetings without further notice of each meeting.

(3) The Council shall hold an annual meeting in the month of February in each year at the office of the Council.

22. (1) The Council may out of its funds pay to each of its members (other than the Chairman) an allowance of one guinea per meeting but not exceeding the sum of one hundred pounds each in any financial year.

Allowances to members.

Per 22(1) sup.
1935 H.M.J.*

(2) There may be paid to the Chairman and to the members of the Council out of the funds of the Council all amounts actually and reasonably expended by them in attending meetings of the Council, or of any committee thereof, or in transacting any business of the Council pursuant to a resolution of the Council.

23. The Council may by resolution, subject to the provisions of this Act, make rules—

Rules as to proceedings of Council or committees, &c.

- (a) Regulating the proceedings of the Council and any committee and the conduct of meetings thereof respectively, and the right of persons to attend such meetings :
- (b) Regulating the adjournment and postponement of meetings of the Council, and the manner in which resolutions may be revoked or altered :
- (c) Directing notices of meetings to be given, and prescribing the form and mode and time of service thereof :
- (d) Regulating debates :
- (e) Providing for the calling of special meetings and the notice to be given to members :
- (f) Providing the notice to be given to members of extraordinary business to be transacted at any ordinary meeting :
- (g) Directing minutes to be kept of all proceedings of the Council, and prescribing the mode of confirmation, inspection, and custody of same :
- (h) Providing for the custody of documents and the custody and use of the common seal, and prescribing the mode and form of attestation thereof :

Provided that no resolution made or passed under this paragraph shall affect any person acting in good faith, and taking or to take

any estate, interest, or advantage under any document having or about to have the common seal affixed thereto.

- (i) Prescribing the powers and duties of officers and servants :
- (j) Prescribing forms of and in connection with any proceedings of the Council :
- (k) Concerning anything incidental to any of the matters hereinbefore referred to.

General Powers of Council.

Council may
provide offices.

24. The Council may from time to time provide public offices within or without the district, with fitting furniture for the same, for holding its meetings and transacting its business and for the use of its officers and for any other purposes, and may purchase or take on lease land or buildings for such purposes, or may cause buildings to be erected on any land belonging to or leased to the Council, or any such building to be added to or improved.

Council may
appoint officers
and servants.

25. (1) The Council may by resolution from time to time appoint fit persons to be Inspectors, Manager, Secretary, Treasurer, and all such other officers and servants as it thinks necessary to assist in the execution of this Act, and may pay such persons such salaries and allowances out of the funds of the Council as it thinks fit.

(2) No member of the Council shall be capable of holding any such office.

(3) One person may hold two or more of such offices.

Acting officer.

26. During the absence from duty of any officer of the Council by reason of illness, leave of absence, or other cause, the duties and powers of such officer may be performed and exercised by an acting officer appointed by the Council, and any such appointment may be either general or for some occasion only.

Borrowing
powers of
Council.

27. (1) The Council may from time to time by resolution raise a special loan for carrying out any of the purposes of this Act.

(2) Such loan shall be raised in the manner prescribed by the Local Bodies' Loans Act, 1926, and the Local Government Loans Board Act, 1926, all the provisions of which Acts shall accordingly extend and apply subject always to the provisions of this Act :

Provided always that the security for any such loan shall be limited to the property and revenues of the

Sec. 27 (2)
1935
Sup.
20. 17 *

Council, and the Council shall have no power to strike or levy any special or other rate.

28. Any of the local authorities within the district may out of its general fund contribute by way of advance such sum as it thinks fit towards the expenses of the investigation of matters incidental to the establishment of the Milk Council and the election of the Council, including the cost of promoting and passing this Act, and towards any expenses that may be incurred by the Council before the end of the financial year in which it is constituted. All moneys advanced by a local authority under this section shall be repayable by the Council on demand, and shall be recoverable by the local authority as a debt due to it by the Council.

Advances by local authorities to meet first year's expenses of Council.

29. The Council may in anticipation of its revenue from time to time borrow moneys from its bankers by way of overdraft or from any corporation or person by way of temporary loan, but, except with the consent of the Local Government Loans Board, not exceeding at any time the amount of the estimated income for the current financial year less the amount of moneys in the hands of the Council at the commencement of the year (if any).

Council may borrow in anticipation of revenue.

30. All moneys belonging to the Council shall be paid into such bank as the Council from time to time appoints to an account to be called the Milk Fund Account.

Council moneys to be banked.

31. No money shall be drawn out of the bank except pursuant to a resolution of the Council, and all moneys shall be paid by the Council in cash or by cheque signed by any two of such of the members as the Council from time to time authorizes to sign cheques, and countersigned by an officer appointed by the Council for the purpose.

How moneys to be withdrawn from bank.

32. The Council may in every financial year out of its funds expend for purposes not authorized by any Act or law for the time being in force any sum or sums not amounting in the whole to more than one per centum of the gross receipts of the Council for that year, exclusive of loan-moneys.

Unauthorized expenditure.

33. The income and revenue of the Council shall consist of the levies to be paid by the milk-vendors as hereinafter provided, and also of all license and other fees or charges received by the Council as hereinafter provided.

Income and revenue of Council.

Sec. 33 amend. -
1935 2/17*

Annual estimate of expenditure.

34. The Council shall on or before the thirty-first day of March in each year cause an estimate to be prepared of the proposed expenditure of the Council for the next ensuing financial year. All expenditure incurred between the coming into operation of this Act and the thirty-first day of March, nineteen hundred and thirty-four, and the expenditure mentioned in section twenty-eight hereof, may be included in the first estimate, and any deficiency or surplus at the end of any financial year shall be carried forward as an asset or liability, as the case may be, into and calculated or allowed for in making and assessing requirements of the next financial year.

*Sec. 34 amended
1935 No. 17 **

Levy on milk-vendors.

35. The amount of such estimated expenditure, less the amount of the estimated income for the year, may be raised by the Council by a levy upon all milk-vendors in the district.

Amount of levy.

36. Such levy shall be on a gallonage basis at a rate of not more than one farthing per gallon on all milk sold by milk-vendors within the district, and notice of the amount of such levy and any increase or decrease of the amount and the date when the same shall take effect, and the date or dates on which it shall become payable, shall be published once in any newspaper circulating within the district.

*Sec. 36 amended
1936 No. 17 **

Increase or reduction of levy.

37. The Council shall make such levy by resolution, and the amount thereof may be increased or reduced from time to time by resolution of the Council.

Returns by milk-vendors of milk sold.

38. (1) Every milk-vendor shall within seven days after the end of each calendar month deliver to the Council a return in the form prescribed by the Council setting forth the quantity of milk sold by him during that month, and such other particulars (whether of a like nature or not to the particulars specified in this section) as may be from time to time required by the Council. The return shall, if required by the Council, be verified by statutory declaration. On the delivery of the return to the Council the levy shall become immediately payable, and shall constitute a debt payable by the milk-vendor to the Council, and may be recovered by the Council by action in any Court of competent jurisdiction.

*Sec. 38 amended
No. 17 * 1935*

Penalty for failure to make returns or pay levy within prescribed times.

(2) Every milk-vendor who fails to deliver to the Council any return required under this section within the time hereinbefore provided in that behalf, or who fails to pay the levy within fourteen days from the date when

the same became payable, shall be liable to an additional payment of ten per centum on the amount which should have been so paid.

Powers of the Council in relation to Milk.

39. From and after such date as may be fixed by the Council for the purpose and publicly notified (hereinafter called the appointed day), it shall not be lawful for any person or corporation, whether as principal, agent, or otherwise,—

After appointed day milk to be sold in district only under license from Council.

- (a) To sell milk in the district; or
- (b) To deliver milk in the district in pursuance of a contract of sale made whether within the district or elsewhere; or
- (c) To bring into the district for use, consumption, or sale milk purchased outside the district; or
- (d) To have milk in his or its possession for sale in the district,—

save under a license issued in that behalf by the Council and in accordance with the terms and conditions thereof.

40. On and after the appointed day it shall not be necessary for any milk-vendor licensed by the Council to obtain from any local authority any license or authority relating to the sale of milk within the district, and the by-laws of any local authority relating to the sale or keeping of milk within the district shall not apply to any such licensee.

License from local authority unnecessary.

41. For the purpose of securing for the inhabitants of the milk district an adequate supply of milk of good quality and at a reasonable price the Council may, subject to the provisions of this Act, grant, refuse, suspend, or revoke any such license as aforesaid, and may in granting any such license grant it on such terms and conditions and for such period as the Council thinks proper, and in particular on condition that the licensee shall pay such compensation as the Council thinks right to any milk-vendor whose interests are prejudicially affected by the license.

Grant or refusal of licenses.

See H) and: v. 1/17 *
1936 1/17 *

42. Every person who is knowingly concerned in any breach by himself or any other person of the terms or conditions of any such license as aforesaid shall be guilty of an offence against this Act, and shall be liable accordingly.

Penalty for breach of license.

Offences and penalties.

43. Every person is liable to a fine of twenty pounds who directly or indirectly by himself, his agent, or servant,—

- (a) Resists or wilfully obstructs any officer under this Act in the performance of his duty ; or
- (b) Refuses to give information or gives false information in answer to any inquiry made by such officer in the performance of his duty ; or
- (c) Commits any breach of any of the provisions of this Act ; or
- (d) Fails to comply with any lawful requirement of the Council, or does any act or thing to which this Act relates otherwise than as prescribed by the Council or does any act or thing prohibited by the Council under this Act.

Powers of inspection, prohibition, &c.

44. The Council may, subject to this Act,—

- (a) At any reasonable time, by its authorized officers, enter and inspect any premises which are believed to be used as dairy premises or milk-stores, and examine and take notes, copies, or extracts of or from any books, documents, papers, and any scales, measures, appliances, apparatus, vehicles, or utensils referring to or used in connection with the treatment, storage, distribution, or sale of milk :
- (b) Call for and obtain such information or returns as in the opinion of the Council are necessary or desirable :
- (c) Require milk-vendors to keep such books and records as may be required by the Council, and in such forms as it may from time to time prescribe :
- (d) Take or purchase samples of milk from any dairy premises or milk-stores, or from any conveyance, utensil, or container.

45. (1) The Council may, for the purposes of this Act,—

- (a) Carry on research and investigation relating to milk, including chemical, physical, bacteriological, and economic research, with power to set up a laboratory and employ an analyst and other efficient officers :
- (b) Investigate, devise, and initiate as far as may be practicable improved methods of producing,

Powers of Council as to supply and distribution of milk within district.

*Sec. 45 and 46 (1935)
No. 17 **

collecting, treating, delivering, and distributing milk (including the distribution of milk in sealed containers), and in particular the method of delivery by means of such blocking or zoning system as the Council shall deem fit, and it shall be the duty of the Council to put into effect as soon as practicable an economic system of consolidation or zoning of rounds :

- (c) Regulate and control exclusively the supply and distribution of milk within the district, and for that purpose, but without affecting the generality of such power, the Council may by resolution—

(i) Define or divide districts and create inner and outer zones from which milk may be supplied from time to time, and regulate and control such supply :

(ii) Subject to any existing awards under any Act, fix the hours of delivery within the district :

(iii) Fix the time and place of delivery of milk by any milkman :

- (d) Investigate, devise, and initiate methods, practices, and charges of payment or collection of accounts for all milk sold so as to eliminate as far as possible all bad debts :

- (e) From time to time, having regard to costs of production and distribution and all other relevant considerations, by resolution—

(i) Fix the price or prices which may be paid to a dairyman for milk :

(ii) Fix the price or prices which may be paid to or charged by any person, firm, or corporation for the collection, treatment, storage, distribution, and delivery of milk :

(iii) Fix the price or prices to be paid by milk-vendors or other persons or corporations for milk bought by wholesale for resale or for use :

(iv) Fix the price or prices at which milk may be sold by retail or wholesale :

(v) Vary or revoke any such price, but so as to apply only to future transactions :

(f) From time to time by resolution—

(i) Prescribe grades for milk which may be supplied for sale or sold, including the prescribing of different grades for different classes of milk :

(ii) Prescribe methods to be followed in the treatment, carriage, deposit, storage, distribution, and sale of milk :

(iii) Prescribe the maximum temperatures at which milk is to be kept at any and every stage from its place of production to its delivery to a purchaser for consumption :

(iv) Require milk to be sold in containers or bottles :

(v) Require milk of any prescribed grade to be sold in prescribed containers labelled as prescribed :

(vi) Prescribe methods of dealing with milk which does not comply with the requirements of this Act or the Council :

(vii) Prescribe methods of cleansing and sterilizing cans, vessels, utensils, appliances, and equipment used in connection with the deposit, treatment, carriage, distribution, supply, or sale of milk :

(g) From time to time by resolution prescribe the methods of giving or serving notices, orders, demands, or requirements by the Council or any officer :

(h) From time to time by resolution prescribe the matters in respect whereof fees shall be payable under this Act, and fix the amounts of such fees :

Provided that any person required to pay any such fee may appeal to the Minister of Industries and Commerce as to the reasonableness of the amount thereof, and the decision of the Minister shall be final.

(2) Where by the last preceding subsection any power thereby conferred on the Council is required to be exercised by resolution, such resolution shall specify a date on which it shall come into force, being a date not

earlier than fourteen clear days after the day of the meeting at which such resolution was passed.

(3) Every such resolution shall be publicly notified at least once in a daily newspaper circulating in the district, by advertisement setting forth the object, purport, or general effect of such resolution, and stating that a copy thereof may be inspected during office hours at the office of the Council, and that printed copies thereof may be there obtained on payment of such charge (not exceeding one shilling for any one copy) as is fixed in such advertisement. Such advertisement shall be published (or if published more than once shall be first published) not later than three clear days after the day of such meeting as aforesaid.

Miscellaneous.

46. Where anything is omitted to be done or cannot be done at the time required by or under this Act, or is done after such time or is otherwise irregularly done or sufficient provision is not made by or under this Act, the Governor-General may, by Order in Council gazetted at any time before or after the time within which such thing is required to be done, extend such time or may validate anything so done after the time required or so irregularly done, or make other provisions for such case as he thinks fit.

Extensions of time.

47. Any summons, writ, or other legal proceedings requiring to be served on the Council may be served by being left at the office of the Council, or given personally to the Secretary or Chairman thereof.

Service of summons, &c.

48. (1) No action shall be commenced against the Council or any member thereof, or any person acting under the authority, or in the execution or intended execution or pursuance of this Act, or any alleged irregularity, or trespass, or nuisance, or negligence, or for any act or omission whatever, until the expiry of one month after notice in writing specifying the cause of action, the Court in which the action is intended to be commenced, and the name and residence of the plaintiff, and of his solicitor or agent, in the matter has been given by the plaintiff to the defendant.

Notice to Council of impending actions.

(2) Every such action shall be commenced within six months next after the cause of action first arose, whether the cause of action is continuing or not.

Recovery of
fines.

49. All fines recoverable under the provisions of this Act, or any by-laws or regulations made thereunder, may be recovered in a summary way, and when recovered shall be the property of the Council, and paid into the said Milk Fund Account.

Relief from
contracts
impossible of
performance
by operation of
this Act.

50. Where at the date of the passing of this Act any contract relating to the sale or supply of milk in or for the district is in force, and compliance with the terms of such contract is prevented either wholly or partially by the terms of this Act or of any order, license, or resolution made, issued, or passed by the Council hereunder, then in respect of such prevention this Act shall be a complete defence to any action on any such contract.

Contracts of
Council, how
made.

51. (1) Any contract which if made between private persons must be by deed shall, if made by the Council, be in writing under the seal of the Council.

(2) Any contract which if made between private persons must be in writing signed by the parties to be charged therewith may, if made by the Council, be in writing signed on behalf of the Council by some person duly authorized in that behalf.

(3) Any contract which if made between private persons may be made verbally without writing may be similarly made by or on behalf of the Council.

52. No member of the Council shall be personally liable for any act or default of the Council done or omitted to be done in good faith in the course of the operations of the Council, and no officer of the Council shall be personally liable for any act or default done or omitted to be done in good faith in the course of his authorized duties.

53. (1) A copy of any resolution of the Council or any committee thereof, certified by the Chairman of the Council to be correct, shall, until the contrary is proved, be sufficient evidence of such resolution in any proceedings under this Act.

(2) A certificate signed by the Chairman of the Council to the effect that any person required to be licensed under this Act was at the date of the certificate so licensed or not so licensed shall, until the contrary is proved, be sufficient evidence of the matters stated therein

Members not
personally
liable for act or
default of
Council.

Evidence.

54. (1) Any person aggrieved by any decision of the Council in granting, refusing, varying, revoking, or suspending any license, or in attaching any condition to a license under this Act, or in fixing or varying any price under subparagraphs (i) to (v) of paragraph (e) of section forty-five of this Act, may appeal to the Magistrate's Court at Auckland, and such Court shall have power to make any such order as it thinks fit.

Appeal against decisions of Council in relation to licenses and prices.

(2) The appeal shall be made in the following manner, and subject to the following conditions:—

- (a) Within fourteen days after receipt of notice of any decision of the Council which may be the subject of an appeal, the appellant shall state and sign a case setting forth the facts and the grounds of objection to the decision of the Council and the redress to which the appellant considers himself to be entitled, and shall, within the period aforesaid, file the same in the Court and serve a copy thereof on the Council.
- (b) Such case shall state an address for service within the district at which address the appellant may be served with any document or written communication in connection with the appeal.
- (c) Within seven days after service on it of the case stated, the Council shall file in the Court an answer to the case and serve a copy thereof on the appellant. Such answer shall set forth the facts as alleged by the Council and the grounds of its decision.
- (d) After the filing of the case by the appellant the Magistrate or the Clerk of the Court shall, on the application of either party, appoint a place and time for the hearing of the appeal.
- (e) The party at whose instance a place and time for hearing have been appointed shall, within four days after the making of such appointment, serve upon the other party a notice stating the place and time so appointed.
- (f) Subject to the provisions of this Act, the appeal shall be heard and determined in accordance with the ordinary practice of the

Court as on the trial under the Magistrates' Courts Act, 1928, of an action instituted between the appellant as plaintiff and the Council as defendant, and the rules of the Court shall apply thereto accordingly.

- (g) Any time fixed by this section may be shortened or extended by the written consent of the parties filed in the Court, or may be extended by a Magistrate, on the application of either party, on such terms as the Magistrate may think fit, and whether such application or extension be made before or after the expiry of the time so fixed by this section.
- (h) The like fees shall be taken by the Clerk of the Court in respect of any proceedings under this section as are for the time being directed to be taken in actions under the Magistrates' Courts Act, 1928, and the Court shall have the same power as it enjoys under the last-mentioned Act of ordering that the costs of any such proceedings, including fees of the Court and witnesses' expenses and other necessary payments or disbursements and solicitors' fees, be paid by the appellant or by the Council to the other of them, and the Court may, for the purpose of assessing any such fees, make an estimate of the value of the rights which are the subject of the appeal, but so that such estimate shall not in any case exceed the sum of three hundred pounds, and any sums ordered to be paid under this section shall be recoverable in like manner as upon a judgment under the last-mentioned Act.

55. Nothing contained in this Act shall relieve any person from the obligation of complying with all the provisions of the Dairy Industry Act, 1908, the Health Act, 1920, and the Sale of Food and Drugs Act, 1908, and of all regulations made under any of the said Acts.