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Cornhusker Economics

Cooperative Extension

Institute of Agriculture & Natural Resources
Department of Agricultural Economics
University of Nebraska – Lincoln

Federal Court Rules Missouri Livestock Price Regulation Statute is Constitutional

Market Report	Yr Ago	4 Wks Ago	6/22/01
<u>Livestock and Products,</u>			
<u>Average Prices for Week Ending</u>			
Slaughter Steers, Ch. 204, 1100-1300 lb Omaha, cwt	\$69.38	\$76.78	\$72.79
Feeder Steers, Med. Frame, 600-650 lb Dodge City, KS, cwt	93.38	100.04	91.71
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg	96.00	100.05	105.79
Carcass Price, Ch. 1-3, 550-700 lb Cent. US, Equiv. Index Value, cwt	112.27	119.24	112.99
Hogs, US 1-2, 220-230 lb Sioux Falls, SD, cwt	53.50	52.00	56.00
Feeder Pigs, US 1-2, 40-45 lb Sioux Falls, SD, hd	42.59	*	*
Vacuum Packed Pork Loins, Wholesale, 13-19 lb, 1/4" Trim, Cent. US, cwt	134.40	104.70	138.69
Slaughter Lambs, Ch. & Pr., 115-125 lb Sioux Falls, SD, cwt	89.62	*	51.00
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb FOB Midwest, cwt	202.50	174.60	165.83
<u>Crops,</u>			
<u>Cash Truck Prices for Date Shown</u>			
Wheat, No. 1, H.W. Omaha, bu	3.04	3.24	2.99
Corn, No. 2, Yellow Omaha, bu	1.78	1.67	1.62
Soybeans, No. 1, Yellow Omaha, bu	4.77	4.31	4.33
Grain Sorghum, No. 2, Yellow Kansas City, cwt	3.03	3.24	3.12
Oats, No. 2, Heavy Sioux City, IA, bu	1.21	1.50	1.46
<u>Hay,</u>			
<u>First Day of Week Pile Prices</u>			
Alfalfa, Sm. Square, RFV 150 or better Platte Valley, ton	105.00	115.00	102.50
Alfalfa, Lg. Round, Good Northeast Nebraska, ton	45.00	82.50	77.50
Prairie, Sm. Square, Good Northeast Nebraska, ton	70.00	105.00	105.00
* No market.			

In 1999 South Dakota, Nebraska and Missouri enacted statutes limiting price differentials being paid by packers to livestock producers. The South Dakota statute was ruled unconstitutional in August 1999 for interfering with interstate commerce. The Nebraska Attorney General ruled in 2000 that state packer price restrictions were preempted by October 1999 federal livestock price reporting requirements. The Missouri statute was upheld as constitutional in 2001. This newsletter issue will contrast the three decisions, and consider what legal options are available to the Nebraska Unicameral should it wish to re-establish limits on livestock price differentials paid by packers.

South Dakota. The 1999 South Dakota livestock pricing statute states in part that “A packer purchasing or soliciting livestock *for slaughter in this state* may not discriminate in prices paid or offered to be paid to sellers of that livestock [emphasis added].” An exception is granted where the purchase is on a grade and yield basis, if the packer “publishes” the basis for any premiums paid and if the premium is available to other sellers. The statute applied to all livestock purchased for slaughter in South Dakota, including livestock outside South Dakota. The court noted that some South Dakota packers purchased up to 75% of their swine from other states.

The Federal District Court in South Dakota ruled that this statute was unconstitutional (1) because it applied to cattle and swine purchased outside of South Dakota for slaughter in South Dakota, and (2) because in response to the statute, all South Dakota packers purchased all their slaughter cattle and swine on a strict grade and yield basis with no premiums, resulting in lower prices to South Dakota livestock producers. The court ruled that the livestock pricing statute indirectly discriminated against interstate commerce because it applied to livestock sales outside South Dakota, and also because there was no offsetting economic benefit to South Dakota livestock producers (indeed, South



Dakota livestock producers were receiving lower prices).

Missouri. The 1999 Missouri livestock pricing statute states in part that “A packer purchasing or soliciting livestock *in this state for slaughter* shall not discriminate in prices paid or offered to be paid to sellers of that livestock [emphasis added].” An exception is granted where the purchase is on a grade and yield basis, if the packer “publishes” the basis for any premiums paid and if the premium is available to other sellers, similar to the South Dakota statute. Significantly, however, the Missouri statute applied to *instate purchases* for slaughter, whereas the South Dakota statute applies to livestock purchased for *instate slaughter*. The Missouri Federal District Court ruled in the summer of 1999 that the Missouri livestock pricing statute was unconstitutional, similar to the South Dakota statute. The state of Missouri appealed this decision to the Federal Court of Appeals.

The 8th Federal Circuit Court of Appeals reversed the district court opinion in May 2001. The appeals court ruled that the Missouri statute (in contrast to the South Dakota statute) applied only to packer livestock purchases within Missouri, and did not affect interstate purchases by Missouri packers. Thus the appeals court ruled there was no indirect discrimination against interstate commerce as had been the case in South Dakota, as the Missouri statute did not regulate sales occurring outside of Missouri. The appeals court further noted that Missouri packers could avoid the state livestock pricing restrictions by purchasing their slaughter livestock outside of Missouri, giving them livestock acquisition options not available to South Dakota packers. Similarly, Missouri livestock producers seeking higher prices than grade and yield with no premiums could have their livestock fed and sold outside of Missouri if better prices were available there.

Interestingly, in both South Dakota and Missouri the effect of state livestock pricing requirements appears to be grade and yield pricing being the only pricing available to all livestock producers, with consequently lower livestock prices to all producers, at least in the short-run.

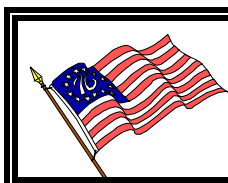
Nebraska. The Nebraska livestock pricing statute states in part that “it is unlawful for a packer purchasing or entering into a contract to purchase swine to pay or enter into a contract to pay different prices to sellers of the

swine.” An exception is granted in cases where the purchase is on a grade and yield basis, if the packer reports the basis for any premiums in the Nebraska livestock price reporting system and if the premium is available to other sellers. The Nebraska statute apparently would apply to both instate and interstate packer purchases by Nebraska packers. Thus, the Nebraska statute is more similar to the South Dakota livestock pricing statute, and would probably be ruled unconstitutional if challenged in court.

In December 1999 the Nebraska Attorney General was asked by the Nebraska Director of Agriculture if the Nebraska livestock pricing statute had been preempted by the October 1999 Federal Livestock Price Reporting Program. The Nebraska Department of Agriculture was responsible for implementing the state livestock price reporting program. The Attorney General’s January 2001 decision had two significant legal conclusions. The first was that the federal law specifically preempted state livestock reporting programs. The second conclusion dealt with the relationship between the Nebraska livestock pricing restrictions and the price reporting program. One way for packers to have paid price premiums was to have reported those premiums in the Nebraska livestock price reporting system. But the federal law preempted the Nebraska livestock pricing system. The Attorney General concluded that because the pricing restrictions and price reporting programs were so closely intertwined legally, the Nebraska pricing restrictions were preempted along with the state price reporting program.

Policy Options. The packer livestock pricing restrictions have been ruled invalid by the Nebraska Attorney General. Presumably that law could be rewritten to allow premiums to be paid if the premiums were reported under the federal price reporting program. The more interesting and more difficult question is whether the state of Nebraska should seek to limit volume premiums or other price premiums to be paid to livestock producers. To meet federal constitutional requirements, such restrictions would need to be limited to livestock purchased in Nebraska for slaughter in Nebraska. The prudent thing to do would be to watch what happens in Missouri. In the short-run, Missouri packer price restrictions could hurt Missouri livestock feeders if packers increase their interstate livestock purchases to avoid Missouri pricing restrictions. What will happen in the long-run as the impact of federal livestock price reporting is reflected in the market, remains to be seen.

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