

STORY NUMBER 15 - **DRAFTING THE CALIFORNIA MARKETING ACT**  
- SACRAMENTO, CALIFORNIA  
As told by William J. (Bill) Kuhrt, 1990

This has to do with the development and passage of the California Marketing Act of 1937. At first I hadn't intended making a separate statement about it, but it seems in recent years at least a dozen people have claimed authorship of the law, so I thought it best to make a plain out statement so we could clear the air.

This occurred when I was transferred from the Los Angeles Milk Industry Board Chairmanship up to Sacramento under Civil Service. When I reached Sacramento I found out we had some bills, laws that had been passed by the Legislature, but they couldn't be used in connection with the marketing of general crops. Of course the Milk Law was already in effect, that is the producer's side of it. And I was also engaged in drafting the distributor side of the Milk Law in 1937. But we had before us three different pieces of legislation that were supposed to help in the marketing of the various general crops produced in the state of California, something towards 200 different crops. And none of them could be used. The first one was the old Pro-Rate Act which was handled by a separate Pro-Rate Commission which had been drafted by the Farm Bureau attorney and Edson Abel and also with the assistance of the Giannini Foundation. Its provisions were limited largely to control of surpluses. And whereas they had issued a number of programs, a number of them were in litigation by reason of the procedures in the implementation of the statute itself. So it was not available to us in the Department of Agriculture anyway. Another act that had been passed in 1935 was called The Little Triple-A Act. It followed identically the provisions of the federal law, the Agricultural Adjustment Act. And it required the director of Agriculture to put into effect in California regulations on a particular crop that were similar to those that had been put into effect by the federal government relating to interstate commerce. The attorney general had ruled that that was an unconstitutional delegation of state authority to the federal government, so that particular piece of legislation was not available to us. And there was a bill that had been sponsored by the Grange and supported by a number of the cooperatives in the state. It was called the California Agricultural Producers Marketing Act. It carried most of the provisions which the cooperatives and the farmers wanted, but it was a failure from the standpoint of the circumscribing the powers of the director of Agriculture so that he was not sufficiently limited in his actions. That of course was an unconstitutional delegation of legislative power, constitutional power. So that act had been declared unconstitutional by the State Attorney General.

All during the summer of 1936 a committee of representatives of marketing associations handling various general crops plus a lot of leaders in the industry had meetings here in Sacramento, and

with the aid of an attorney they tried to draft a Marketing Act that would meet the requirements of the courts. They had a good many meetings. We were not party to it. They didn't invite us from the State Department of Agriculture (at least I was not aware they did), although my director was absolutely opposed to participation in any more marketing laws. But on a Friday night about four o'clock in the afternoon the master of the State Grange came to the Director of Agriculture and told him that the statewide committee had terminated its activities sine die. And that there would be no more meetings, and they were not able to agree on the text of a bill. I was a little surprised when I heard later that the attorney was Matthew O. Tobriner, who later became an Associate Justice of the Supreme Court. I thought he was familiar with all of the phases of a bill that would be held constitutional by the courts, but apparently he was not able to convince the committee. And so there was no bill. George Sehlmyer told the Director the producers of a large number of agricultural products wanted to have a marketing act that would be constitutional, and they wanted the Department of Agriculture to draft it. But he pointed out that the next Wednesday would be the last day that any new legislation could be introduced into the legislature. In those days they met every two years. So it would be a delay of two years if they couldn't get a bill into the legislature by the next Wednesday.

When Sehlmyer told the Director that he wanted a bill drawn, the Director said very flatly, "No, no, no, we can't draft any bill like that in that number of days and I don't want the legislation to be brought into the Department anyway." Sehlmyer was not to be dissuaded. So he said, "We have to have something and we tried our best but we think you can help us." He suggested they bring Dr. Theodore Macklin, who was the chief of my division, into the meeting to see what he could offer. Macklin went into the meeting, heard the story, and said, "Well, we have one man in the division who has had quite a lot of experience in legislative drafting, but of course this is a very difficult assignment. We don't have any time. It's Friday afternoon, staff is going to leave in a very short time, and he's going to be handicapped to get anything out." But he said, "Let's call Bill Kuhrt in and see what he can suggest."

So I was summoned into the meeting and heard the story. And I heard the Director say he didn't want the bill and that he had told Sehlmyer flatly we couldn't do it. But Sehlmyer again was not to be dissuaded. He turned to me and said, "Bill, do you think you could draft something and have it ready by Monday morning?" I said, "Well, Mr. Sehlmyer, the only thing I can say to you is that I can try. I don't know whether I can get it finished or not but I'll do my very best to have something ready by Monday morning." The Director said, "Well, good luck to you, Bill. You're really taking on a dead elephant."

So the meeting broke up right then and there and I went back to my desk, called Dorothy my wife and said, "It looks like I'm tied up pretty much all through the weekend. I won't be home tonight until midnight, and the same thing all day tomorrow at midnight, and I don't know how long it's going to take on Sunday." I went to work with a yellow legal size pad and a pencil and started drafting. And as I said before, I worked until midnight Friday night, all day Saturday, and Saturday night til midnight, and back to work on Sunday morning. I finished the thing about six o'clock on Sunday night. There were 64 pages of longhand on this legal size paper. And I just put a clip on it and set it aside.

The next morning I handed it to Jacobsen, the Assistant Director who handled legislation for the Department, and he said, "Well, we have to get it typed." So they came back to our division and our only secretary said she couldn't do it all in that one day but asked if we could get one more girl to help. So they got another girl. And by nightfall on Monday they had typed up the whole 64 pages and had proofread it. So it was in that shape, with sufficient copies, and it was turned back to Jacobsen. He turned it over to George Sehlmyer, master of the State Grange, and Sehlmyer took it to the Chairman of the Senate Agricultural Committee. They had to have the Legislative Council Bureau of the state government go over it, which they did, and they made one change. They changed the word "funds" to the word "monies" and that's the only change that was ever made in that bill until much later.

So it went back to the Senate Agriculture Committee and lo and behold every member of the committee went on as a sponsor of that bill. And they also put in an urgency clause which would make it possible to have it become effective in September instead of January. The bill went into the Senate, was passed immediately, went over to the Assembly, was passed immediately, and went to the Governor and was approved almost immediately. I had named it the California Marketing Act of 1937 and so that's the way it went through, and that's the way it was passed by the Legislature and signed by the Governor. And it became effective in September of 1937.

So that's the story of the California Marketing Act. No one else participated in the drafting and so anyone else who claims they drafted it is mistaken.