

**BUTTER BILL, MINING IN WICHITA GAME
RESERVE; HEARINGS BEFORE THE
COMMITTEE ON AGRICULTURE HOUSE
OF REPRESENTATIVES; 67 CONGRESS, 2
SESSION; JUNE 17 AND 21, 1922; SERIES
DD**

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COMMITTEE ON AGRICULTURE.

HOUSE OF REPRESENTATIVES.

SIXTY-SEVENTH CONGRESS.

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BUTTER BILL.

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Saturday, June 17, 1922.

The committee met at 10 o'clock a. m., Hon. Gilbert N. Haugen (chairman) presiding.

The CHAIRMAN. Gentlemen, the committee has met this morning to consider H. R. 12053. I might state that my attention was called to the fact that certain States, among them the State of Massachusetts, have passed laws adopting the Federal regulation with reference to the standards for butter. The ruling of the department some 10 years ago required 82½ per cent butter fat.

Mr. VOIGT. Was that pursuant to an act of Congress?

The CHAIRMAN. That was a regulation adopted pursuant to the pure food and drugs act.

Mr. VOIGT. Then the present rule which has the force of law is that butter must have 82½ per cent of butter fat?

The CHAIRMAN. Yes; but that rule has never been enforced. All that has been required has been 80 per cent butter fat.

Mr. McLAUGHLIN of Michigan. Do you mean they made a ruling which has the force of law which has not been enforced?

The CHAIRMAN. It is not practicable, because that is absolutely contrary to the practice in this country and also in other countries.

Mr. JONES. Mr. Chairman, are we going into hearings on this new legislation now?

The CHAIRMAN. The only thing suggested in the bill is to make the rule requiring 80 per cent fat, which is being applied now, the law.

Mr. McLAUGHLIN of Michigan. The present ruling requires 82½ per cent?

The CHAIRMAN. Yes; but it has never been enforced, and if butter were shipped into the State of Massachusetts containing less than 82½ per cent it would be seized and held up. A stay of 30 days has been secured so the Massachusetts law will not be enforced for 30 days but after the 30 days has expired a shipment of butter into that State containing less than 82½ per cent butter fat might be held up.

Mr. McLAUGHLIN of Michigan. Can we pass a law to compel them to accept butter contrary to their State law?

The CHAIRMAN. No; but the law of Massachusetts has adopted the Federal standard, which according to the rule is 82½ per cent as the standard to be observed there, while in fact in other places it is only 80 per cent.

Mr. McLAUGHLIN of Michigan. Is it a law or ruling of the State of Massachusetts?

The CHAIRMAN. My information is that it is the law. That is, the law authorizes the adoption of the Federal standards. A change in the Federal standards, as this bill proposes, would automatically change the Massachusetts standard to 80 per cent.

Mr. TINCHER. Let me see if I understand this matter. The Legislature of Massachusetts has passed a law adopting the Federal standard, and the Federal standard is now 82½ per cent, but they have never enforced that ruling and have always called for 80 per cent butter fat?

The CHAIRMAN. That is correct.

Mr. THOMPSON. Who has never enforced it?

The CHAIRMAN. The department.

Mr. THOMPSON. Why did they adopt a rule and then never enforce it?

The CHAIRMAN. It has never been enforced anywhere, because it is not in line with general practice.

Mr. HAYS. Does the Massachusetts law incorporate the percentage or just adopt the Federal regulation?

The CHAIRMAN. It adopts the Federal regulation by law.

Mr. HAYS. If we change the percentage to 80 per cent, will that automatically change the Massachusetts law?

The CHAIRMAN. Yes; and there are a number of other States that have adopted the same requirement?

Mr. McLAUGHLIN of Michigan. Who knows whether the Massachusetts law provides for 82½ per cent specifically or whether it provides for the standard that is fixed by the Government?

The CHAIRMAN. By law it provides for the adoption of the Federal standard. That is what is stated in this letter which I have before me. We have representatives from the Department of Agriculture who can give us the information. I would suggest that we now hear from Mr. Campbell.

Mr. TEN EYCK. Just one moment, Mr. Chairman. The passing of this law will not prevent Massachusetts from doing just what she is doing now, and that is, insisting upon the butter that comes into that State containing 82½ per cent.

The CHAIRMAN. The enactment of this bill would change the Federal standard to 80 per cent, which would automatically also change the Massachusetts standard, because it has simply adopted the regulations of the department as its standard for butter.

Mr. TEN EYCK. Is that due to the fact that their law relates to the ruling of the department?

The CHAIRMAN. They use the Federal standards. That is my understanding. There are a number of other States that have the same law, but most enforce only the 80 per cent which is the practice of the trade.

Mr. TEN EYCK. But of course, that does not prevent Massachusetts from retaining 82½ per cent as the standard for any butter that comes into that State?

The CHAIRMAN. If this bill is enacted into law it would automatically change the standard.

STATEMENT OF DR. W. G. CAMPBELL, ACTING CHIEF, BUREAU OF CHEMISTRY, DEPARTMENT OF AGRICULTURE.

The CHAIRMAN. Doctor Campbell, we will now hear from you.

Doctor CAMPBELL. In the enforcement of the food and drugs act it has been found necessary to express, for the information of the public, standards upon which the department proposes to operate in the enforcement of that law. The terms of the food and drugs act are general in their provisions. They define a product as adulterated, for instance, if it has some essential material, wholly or in part, abstracted. The department recognized at the very beginning, when it undertook the enforcement of this law, that in the adjustments in the industries which inevitably would follow the enactment of legislation like the food and drugs act that there would be, in a great degree, a voluntary compliance with the requirements of that law if the industry only knew what the law required. The industries were not of themselves capable of making a specific interpretation of the provisions of that law and, therefore, did not know what the requirements of the department might be. The department, therefore, promulgated definitions and standards for various classes of food products. Those definitions and standards did not have the force nor effect of law and the Department of Agriculture has never presumed for a moment that they do have. They merely serve as an indication of the administrative position taken by the department in the enforcement of the law.

Mr. McLAUGHLIN of Michigan. Suppose the department indicates, as you say, a standard and the manufacturers and dealers and so on do not comply with it; what happens?

Doctor CAMPBELL. Then we undertake to enforce the provisions of the law by the collection of that proof which is necessary and would be required to be collected whether we had a standard or not, such, for instance, as the matter of the custom of the trade, Mr. McLaughlin. If we were to find that there was a general practice on the part of the butter manufacturing industry of this country to incorporate as much as 82½ per cent of butter fat in their butter, and we could establish by the industry itself that that was its general practice, then it would be our position in court that the terms of the food and drugs act applied to a product which contained materially smaller quantities of butter fat than that percentage, on the ground that an ingredient had been abstracted in part from the product.

Mr. McLAUGHLIN of Michigan. But you established by your rules 82½ per cent. Doctor CAMPBELL. That was what was done originally.

Mr. McLAUGHLIN of Michigan. And you gave that out as the standard?

Doctor CAMPBELL. Yes, sir; that was the published standard.

Mr. McLAUGHLIN of Michigan. If that does not have the force of law and you are not authorized to prosecute for failure to observe it, and somebody makes butter with 80 per cent of butter fat, how is he liable, and what do you do?

Doctor CAMPBELL. I was just going to develop that in the course of my statement. I was seeking merely to give you a background for the reasons for promulgating standards and have stated that we have never considered for a moment that they had the force and effect of law. They are more nearly expressions of the criminal limitations we think shall exist in a food product before prosecution would be justified than a standard of that product itself. These expressions are not standards of excellence in any sense at all, but they are indications of the limitations which, if a manufacturer in his practices falls below or fails to observe, we believe that the general condition is such that we would be warranted under the terms of the law in instituting a prosecution.

Mr. McLAUGHLIN of Michigan. I do not quite understand your use of the word "criminal." Ordinarily, one commits a crime when he violates the letter or the spirit of the statute. There are, of course, certain common law crimes but even they have to be provided for by the statutes of the States or at least that is usually done.

Mr. TINCHER. Suppose you, as a department head this morning, try to experiment on this committee by giving us the facts about this bill, and presume for a little while that we are somewhat acquainted with the background. The trouble is that when we have witnesses before us we generally get all background and very little facts. Now, just tell us about the bill and why you want it.

Doctor CAMPBELL. I am not advocating the bill, Mr. Tinchler. I was seeking merely to give you such facts as to the conditions which exist at the present time as I could and then leave it entirely to the judgment of the committee to determine whether they wished to adopt the bill or not.

Mr. TEN BYCK. I think, Mr. Chairman, it would be rather interesting to know why they adopted 82½ per cent, first, as a standard, and then changed to 80 per cent.

Doctor CAMPBELL. If you will permit me to go on—

Mr. TINCHER. Yes; go ahead.

Doctor CAMPBELL. I understand it was the practice in the manufacture of butter, which prevailed rather generally, to manufacture at 82½ per cent butter fat when these standards were promulgated. I know that that practice does not prevail now. The general practice is to manufacture it on the basis of 80 per cent. I know, furthermore, that the department has made the announcement that in view of the fact that that is the prevailing practice it will not interfere with the interstate shipment of butter that contains not less than 80 per cent butter fat. That leaves the situation precisely in this fashion: There has never been a repeal of the standard that was promulgated by the department calling for 82½ per cent butter fat. There are a great many of the States that have enacted laws that put into effect automatically the standards promulgated by the department.

Mr. HAYS. May I interrupt with a question there?

Doctor CAMPBELL. Certainly.

Mr. HAYS. You understand the purpose of this bill, I presume?

Dr. CAMPBELL. Quite well, I hope.

Mr. HAYS. Might not the same result be obtained without legislation by the promulgation of a new ruling by the department fixing the percentage at 80 per cent rather than 82½ per cent?

Doctor CAMPBELL. In so far as it related to those State laws that automatically put into effect the standards of the department, that could be done.

Mr. TINCHER. That is, you could promulgate a new rule by the same authority that some department head promulgated the old one?

Doctor CAMPBELL. Yes; but let me explain to you that the standards committee is not under the jurisdiction of the Department of Agriculture to the extent that departmental employees are. The standards committee is composed of nine members. Three of those members are from the Department of Agriculture, three of them are from the organization known as the Association of Official Agricultural Chemists, and the three serving on that committee

designated by that association. The other three are from the organization of State and Federal Dairy and Food Commissioners, and those three are selected by that association.

When this committee meets and considers a proposition like butter or any other food substance, upon which the desirability of the promulgation of a standard is apparent, it requires all of the information it can from whatever source, takes the matter up with the industry, holds hearings, and upon the basis of that announces what it believes would be a proper standard applicable to the food and drugs act, and automatically accepted by those States that have these State laws.

Mr. TEN EYCK. Did the standards committee act upon this 80 per cent standard?

Doctor CAMPBELL. It has not. It has not modified the existing standard.

Mr. TEN EYCK. Is it behind this bill?

Doctor CAMPBELL. I do not know. I do not think the committee is. I do not think the committee knows anything, perhaps, about this measure. After the committee makes its reports, after it agrees upon what the standard shall be, that report must then be acted upon and approved by each of these two associations, and if approved by them submitted to the Secretary of Agriculture, and if approved by him, is promulgated as a standard. Now, you see from that that the standards committee is not exclusively a Department of Agriculture organization. It is one on which there are spokesmen from the association of all the State food and dairy commissioners of the country and from all the official agricultural chemists of the country.

Mr. McLAUGHLIN of Michigan. Is there a law which provides for the appointment and organization of that committee?

Doctor CAMPBELL. No, sir. The only thing that has approached that, Mr. McLaughlin, is the designation of such a committee in the appropriation act for the Department of Agriculture for 1908, I believe, which appropriated money to defray the expenses of the operations of this committee. That was before the food and drugs act passed. The committee was found to be of such a serviceable character and to serve such a definite purpose in connection with the food and drugs act that its expenses since then have been defrayed from that appropriation for the enforcement of that act.

Mr. CLARKE. This committee, as I understand it, up to this time has not promulgated any standard, acting as a committee?

Doctor CAMPBELL. Originally, it adopted and promulgated a standard of 82½ per cent. I may say that in the early days this organization was not quite what I have described, I have described to you the organization as it is to-day.

Mr. VOIGT. When this committee promulgated this standard, it became the action of the Secretary of Agriculture, did it not?

Doctor CAMPBELL. Yes; the Secretary of Agriculture had to approve that standard also before it became a department standard.

Mr. VOIGT. In other words, it became a regulation made by the Secretary of Agriculture under the pure food and drugs act?

Doctor CAMPBELL. It became not quite a regulation but an expression or an information of the administrative course and position of the Department of Agriculture in the enforcement of the food and drugs act as it applied to butter.

Mr. VOIGT. The bill provides in section 2:

"That the word 'butter' as defined in section 1 of the act of August 2, 1886 (24 Stat. L., 209), and in section 4 of the act of May 9, 1902 (32 Stat. L., 193), shall be understood to mean butter as defined in section 1 of this act."

Now, can you give us the definition that is contained in this law of 1886?

Doctor CAMPBELL. I am afraid I can not do that. They relate to internal revenue matters.

The CHAIRMAN. I think I should read that into the record right now.

Mr. VOIGT. I would like to have that definition read into the record so we will know what change is proposed.

(The Clerk read as follows:)

"[Act of August 2, 1886, 24 Stat. L., p. 209.]

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes of this act the word 'butter' shall be understood to mean the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common malt, and with or without additional coloring matter."

" [Act of May 9, 1902, 32 Stat. L., p. 103.]

" SEC. 4. That for the purposes of this act 'butter' is hereby defined to mean an article of food as defined in 'An act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleo-margarine,' approved August second, eighteen hundred and eighty-six; that 'adulterated butter' is hereby defined to mean a grade of butter produced by mixing, reworking, reburning in milk or cream, refining, or in any way producing a uniform, purified, or improved product from different lots or parcels or melted or unmelted butter or butter fat, in which any acid, alkali, chemical, or any substance whatever is introduced or used for the purpose or with the effect of deodorizing or removing therefrom rancidity, or any butter or butter fat with which there is mixed any substance foreign to butter as herein defined, with intent or effect of cheapening in cost the product or any butter in the manufacture or manipulation of which any process or material is used with intent or effect of causing the absorption of abnormal quantities of water, milk, or cream; that 'process butter' or 'renovated butter' is hereby defined to mean butter which has been subjected to any process by which it is melted, clarified, or refined and made to resemble genuine butter, always excepting 'adulterated butter' as defined by this act."

Mr. VOIGT. Then the law of 1886 is the same as the bill before us down to the word "and" in the sixth line?

The CHAIRMAN. Yes.

Mr. McLAUGHLIN of Michigan. This bill adds the following words: "And containing not less than 80 per cent of milk fat and not more than 18 per cent of water."

And right there—it may be my fault—but I do not remember of hearing that expression, "milk fat," before. I have always heard it called butter fat.

Doctor CAMPBELL. It has ordinarily been called butter fat.

Mr. VOIGT. Section 3 of the bill before us provides: "That for the purposes of the food and drug act of June 30, 1906 (Thirty-fourth Statutes at Large, page 768), butter is the article of food defined in section 1 of this act."

Now, does the pure food and drugs act contain any definition of butter in it?

Doctor CAMPBELL. No; it does not.

Mr. VOIGT. It refers to butter as one of the food products?

Doctor CAMPBELL. It has no definition of any food product.

Mr. VOIGT. But the description of food product in the pure food and drugs act does cover butter?

Doctor CAMPBELL. Oh, yes; it applies to butter. All the provisions of the food and drugs act apply to butter.

Mr. VOIGT. Then the only way you could prosecute a man under the food and drugs act for putting butter into interstate commerce which is below the usual content of butter fat would be to accuse him of shipping an article of food from which one of the ingredients had been abstracted?

Doctor CAMPBELL. That is right; and if there had been abstracted from something one of its ingredients, in whole or in part, there is a presumption that there is a standard for that product before it was sophisticated, and what is that standard? That is the condition we are up against in the enforcement of the food and drugs act.

Mr. TEN EYCK. They could prosecute them also for adding as well as for subtracting?

Doctor CAMPBELL. Yes.

Mr. VOIGT. My understanding is they do not add anything to butter, but what they do is very frequently leave too much moisture in the butter. They do not churn it long enough so as to take out the moisture, and consequently there is more water in the butter than there should be.

Mr. TEN EYCK. But they could add other things to butter. They add coloring matter, and some States protect the people against the use of more than a certain amount of coloring matter, do they not?

Doctor CAMPBELL. Oh, yes.

Mr. VOIGT. Let me ask you this question: It would be a violation of the pure food and drugs act to add anything to butter outside of salt and coloring matter, would it not?

Doctor CAMPBELL. That is right. We would take that position.

Mr. VOIGT. That point is taken care of already by the pure food and drugs act?

Doctor CAMPBELL. Yes; by the general provisions of that law.

Mr. VOIGT. If I understand your statement before the committee correctly, the point you are up against is that the pure food and drugs act does prevent people from abstracting some of the important ingredients that go to make up butter, and the pure food and drugs act also prevents anyone from adding anything to butter except salt and coloring matter; but the trouble you are up against now is that manufacturers may permit too much of the water to remain in the butter after it is made, and consequently have too much water and not enough butter fat in the butter?

Doctor CAMPBELL. That is practically the situation.

Mr. VOIGT. And what you want now is a definition or a limitation of the smallest quantity of butter fat which may be contained in the butter?

Doctor CAMPBELL. Let me say again that the department is not urging this legislation. We recognize the difficulties under which we operate. Whether the committee wishes to establish a legal standard or not is up to the committee to determine; but if there is a legal standard, it is going to make the operations of the Government in the enforcement of the Federal law, as well as the operations of the State officials in the enforcement of State laws, very much simpler than is the case now. If we undertake to develop a prosecution for the adulteration of butter on the ground that it contains, for instance, 78 per cent instead of 82½ per cent butter fat, we are going to be required to introduce evidence that will seek to establish what the trade custom is with respect to the butter-fat content of butter, and that a product that falls below that is not entitled to the name butter and has been adulterated within the meaning of the general provisions of the food and drugs act.

That involves expense and litigation and some doubt about your ability always to maintain your position. If 82½ per cent butter fat in butter were the practice when this standard was first promulgated, and if as the custom of trade there was a gradual recession from that until the practice became general at 80 per cent, the question can be pertinently asked whether our experience of the past in that respect has been worth anything in the matter of observation and whether we might not be confronted, if the standard were changed to 80 per cent, with a comparable situation in a few years from now, because the trade practice might bring it down to 78 per cent. That would not be the case if there were a legislation standard. I can say to you frankly that the Secretary sees that condition and sees the condition we are in right now, and believes the most satisfactory, and certainly the only final, solution of the matter would be the enactment of some bill that made a legislative definition for butter.

Mr. TINCHER. Is there not also another complication? Of course, I appreciate that complication; but Massachusetts, it has been said, has passed a law which has the effect of adopting 82½ per cent as the standard, which is found impracticable. Now, when their law goes into effect, that would necessitate their officers in the enforcement of that law stopping all the butter that did not contain 82½ per cent, when the department has found by experience that that is impracticable. If we change the standard to 80 per cent, or pass a law making it 80 per cent, that would relieve the Massachusetts authorities. I do not suppose that they had 82½ per cent specially in mind when they passed that law but simply wanted to adopt the standard which had been adopted by the Government.

Doctor CAMPBELL. I think your presumption on that is correct, from the correspondence we have had with the Massachusetts officials. As was stated by the chairman a moment ago, there are a number of States that have laws that automatically put into effect as the legal standard in the State the standards announced and published by the Department of Agriculture.

Mr. McLAUGHLIN of Michigan. Do those laws name 82½ per cent or just say that the standard in the State shall be the standard adopted by the Department of Agriculture?

Doctor CAMPBELL. The latter is correct.

Mr. McLAUGHLIN of Michigan. That is the way they write the law?

Doctor CAMPBELL. I understand so. The laws vary in their wording in some respects but they have that effect.

Mr. McLAUGHLIN of Michigan. And those laws do not name the percentage in figures; is that correct?

Doctor CAMPBELL. Those particular food laws do not, but there are some States which have by legislative enactment indicated what the butter fat content of butter shall be. Some few States have done that.