

Agriculture and Antitrust Enforcement

Farmer Cooperative Conference

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National Council of Farmer Cooperatives

Representing the Business Interests of Agriculture

What Is Antitrust Law?

Generated from concerns over late-1800s steel, oil, and railroad trusts.

Goal of antitrust law:

To promote free-market competition and eliminate anticompetitive restraints such as monopolies and price fixing.

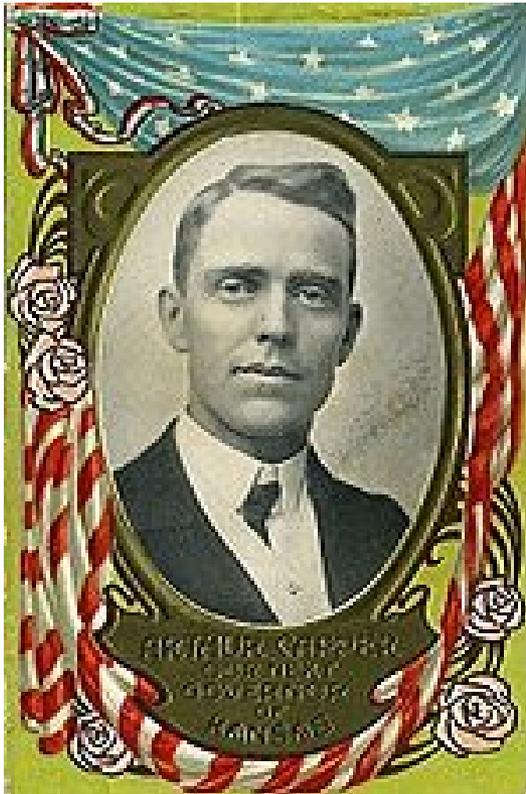
Major Federal Antitrust Statutes

- The Sherman Act (1890)
 - Gives federal government authority to investigate and prosecute unlawful restraints of trade; price fixing; and monopolistic activity.
 - Basis for most antitrust litigation brought by the federal government.
- The Clayton Act (1914)
 - Prevent anticompetitive behavior such as price discrimination, exclusive dealings, and mergers that would lessen competition.
 - Contains exemption for agricultural organizations that meet certain criteria.
- The Federal Trade Commission Act (1914)
 - Established the Federal Trade Commission – goal is consumer protection.

The Capper-Volstead Act, 7 U.S.C. 291

- Enacted in 1922.
- Provides limited antitrust immunity to qualified farmer cooperatives.
- Enables agricultural producers to join together to agree on prices for their products.
- Without the Capper-Volstead Act, such activities would violate the Sherman Act by eliminating competition.

The Capper-Volstead Act: “Magna Carta” of Farmer Cooperatives



Sponsored by **Senator Arthur Capper** from Garnett, Kansas.

Served in the U.S. Senate from 1919-1949.

Two-term Kansas governor.

President of the Board of Regents of Kansas State Agricultural College (K State).

Media mogul.

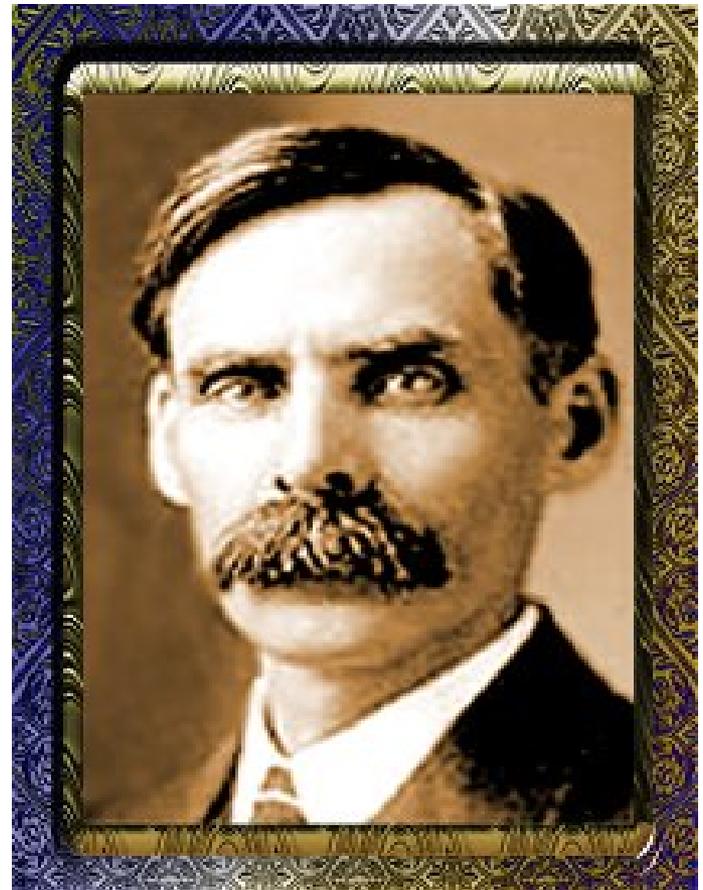
The Capper-Volstead Act

Also sponsored by **Rep. Andrew Volstead** from Minnesota.

Served in U.S. House of Representatives from 1903 to 1923.

The “father of prohibition.”

Schoolteacher and lawyer.



The Capper-Volstead Act

To Qualify:

- Cooperative's voting members must all be producers.
- Cooperative must choose to either operate under one member/one vote, **or** must limit distributions on dividends to eight percent.
- Cooperative must conduct more than half of its business with members.

The Capper-Volstead Act

Restrictions:

- Agreements between cooperatives and non-cooperatives are subject to the antitrust laws.
- Antitrust protection does not apply if cooperatives combine or conspire with non-producers to monopolize or restrain trade.
- Monopolistic practices, engaged in outside the legitimate purposes of a cooperative, are not protected

The Capper-Volstead Act

- Provides limited antitrust immunity for producers to:
 - Join together in their own cooperative
 - Join with other cooperatives to form a common marketing agency
- Gives Secretary of Agriculture oversight authority.
- Without the Capper-Volstead Act, such activities would violate the Sherman Act.

Coops that Rely on Capper-Volstead

Dairy

Fruits

Vegetables

Nuts

Sugar

Wheat

Feedgrains

Rice

Oilseeds

Cotton

Livestock

Reasons for Concern

October 2008

“We will have an Antitrust Division that is serious about pursuing cases.”



Reasons for Concern

Assistant Attorney General
Christine Varney:

- DOJ is “reconsidering the validity of the current rationale” for antitrust exemptions.
- Existing exemptions should be narrowly construed.
- DOJ is “allergic” to antitrust exemptions.



Why Pursue Competition/Antitrust Issues in Agriculture?

- Consolidations in all sectors of agriculture.
- Philosophy that all antitrust exemptions should be eliminated.
- Big=bad.
- View that Bush administration was lax on enforcement.
- Concerns heard by members of Congress.

DOJ/USDA “Workshops”

- Five joint DOJ/USDA workshops announced to explore competition issues in agriculture.

March 12	Issues of Concern to Farmers - Ankeny, Iowa
May 21	Poultry Industry - Normal, Alabama
June 25	Dairy Industry - Madison, Wisconsin
Aug. 27	Livestock Industry - Fort Collins, Colorado
Dec. 8	Margins - Washington, D.C.

Iowa Workshop

- USDA Secretary Tom Vilsack:
 - Purpose of the workshops is to determine whether farmers are “getting a fair shake” in the agricultural marketplace.
 - USDA is actively working on Packers and Stockyards enforcement, dairy pricing, and farmers’ access to lending.
- Attorney General Eric Holder:
 - DOJ committed to enforcing the antitrust laws in the agricultural sector; will use “deep expertise” at USDA to help.

Poultry Workshop

- Opening remarks by government officials
- Two panels: producer concerns & trends in the structure of poultry production
- Two one-hour sessions for producers to air their concerns.
- Attorney General Holder announced formation of agricultural competition task force.

Dairy Workshop

- Cooperatives receive a boost:
 - Secretary Vilsack: USDA “recognizes the important role of cooperatives in bringing fairness and balance to the marketplace.”
 - Assistant Attorney General Varney: “We understand co-ops are essential to the livelihood of producers.”
Department of Justice “is supportive of the mission of cooperatives and the Capper-Volstead Act.”
- Numerous producers spoke in support of co-ops.

Livestock Workshop

- Large and vocal crowd filled auditorium, overflow.
- Debate over whether new Packers and Stockyards Act rulemaking will address competition problems.
- Officials stress concerns over the future of farming.
- Secretary Vilsack said his department is interested in exploring access to capital; risk management; and open and competitive markets.

Workshop on Price Margins

- Dec. 8 - Washington, D.C.
- Focus on the discrepancies between prices received by farmers and prices paid by consumers.
- Analysis of agriculture markets nationally.
 - Dairy pricing panel.
 - Retail food chain panel.
 - Re-cap from prior workshops.

DOJ/USDA Workshops: So Far, So Good

Why the positive statements in Wisconsin?

- NCFC & others working hard to educate Administration, DOJ, & Congress
 - Talks with DOJ officials
 - DOJ official attends NCFC annual conference
 - Briefings for House/Senate Agriculture Committee staff
 - Briefings for industry groups
 - Formal comments submitted to DOJ
 - NCFC members meeting with Congressional delegations and USDA officials
 - Public Relations Campaign

Results from Workshops?

- ✓ Joint DOJ/USDA Task Force established.
- Report and Recommendations to Congress?
- Increased DOJ Enforcement?
- Request for more enforcement authority?

Our Work Is Not Finished

- Negative DOJ comments prompted letter signed by 14 state attorneys general calling for review of the Capper-Volstead Act.
- Many influential policymakers believe large co-ops can't be farmer friendly.
 - Senator Schumer (D-NY) has noted a distinction between “**smaller, farmer friendly co-ops** and larger ones that act like big private companies and don't help our farmers.”

Our Work Is Not Finished

- Stage is set for Farm Bill mischief.
 - “**Small Producer/small farmer**” references could lead to misguided policies.
- Future co-op consolidation and integration could quickly put us back in the DOJ crosshairs.
- Ongoing litigation in mushroom and egg industries may put Capper-Volstead in the spotlight on supply management issues.

Our Work Is Not Finished

- Keep telling the good story of farmer cooperatives.
- Keep Congress informed of DOJ/USDA activity.

Even She Knows Farmer Co-ops Provide For America.





Having
dinner
tonight?

Thank
farmer
co-ops.

**Farmer
Co-ops**

Providing
for America.

Farmer-owned co-ops are central to America's abundant, safe and affordable food supply. From grains to dairy, meat to fruits, nuts and vegetables and much more, farmers rely on their co-ops to help them grow, process, market and deliver America's meals—even the cotton napkins on your dinner table. Keeping farmer co-ops strong means a stronger America. That's much more than just food for thought. To learn more, visit ncfc.org.



Farmer Co-ops
Providing for America.