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1. AGRICULTURAL ADJUSTMENT ACT OF 1938 AS AMENDED — REGULATES MARKETING OF WHEAT IN INTERSTATE AND FOREIGN COMMERCE — STATUS, WHEAT PRODUCED ON FARM.

2. ACT IMPOSES NO PENALTY UPON PRODUCTION, WHEAT UPON FARM WHEN PRODUCER CONSUMES WHEAT IN RAW OR MANUFACTURED FORM — REGULATION WHEN PRODUCT FED TO OR CONSUMED BY ANIMALS OR POULTRY INTENDED TO BE PLACED IN COMMERCE.

3. "MARKETING CARD" — "FARM MARKETING QUOTA" — NO REQUIREMENT FOR SUCH CARD WHERE COUNTY HOME RAISES WHEAT, USE, INMATES OR PATIENTS.

4. REGULATION 507, SECRETARY OF AGRICULTURE — PROCESSING WHEAT — MILLER, WITHOUT PENALTY, MAY GRIND SUCH WHEAT FOR COUNTY HOME.

SYLLABUS:

1. *The Agricultural Adjustment Act of* 1938, *as amended does not regulate the amount of wheat produced on a farm, but regulates only the marketing of wheat in interstate and foreign commerce (Mulford v. Smith,* 307 *U.S.,* 38).

2. *Such act, in terms, imposes no penalty upon the production of wheat upon a farm, regardless of the number of acres used therein or the amount of the yield when the producer consumes the wheat in raw or manufactured form, unless the product is fed to or consumed by animals or poultry, which are or their products are or are intended to be placed in commerce.*

3. *Under the terms of such act, there is no requirement for the obtaining of a "marketing card" or the payment of a penalty where a county home raises wheat to be ground into flour for the feeding of its*

inmates or patients, even though the acreage tilled or yield produced thereon is in excess of the "farm marketing quota" as determined under authority of the Secretary of Agriculture of the United States.

4. *Neither under regulation "No. 507" issued by the Secretary of Agriculture nor under such act are there any requirements of obtaining a "marketing card" by the county in order to have the wheat ground, without penalty, for county home consumption, nor is there imposed upon the miller any penalty for processing the wheat for such purpose without the producer first exhibiting a marketing card, since such processing and use do not constitute "marketing" as defined in the act.*

Columbus, Ohio, September 25, 1941.

Hon. William G. Wickens, Prosecuting Attorney,
Elyria, Ohio.

Dear Sir:

I am in receipt of your request for my opinion which reads in part:

> "Lorain County is the owner of a farm used in connection with the Lorain County Home. Among other things, wheat is grown on the said farm which wheat is used by Lorain County for feeding chickens and animals on the farm, and principally for flour for the support and maintenance of the inmates of the County Home, all of whom are charges of Lorain County.
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> In connection witth the conduct of the Lorain County farm 34.2 acres of wheat were planted last year. After the wheat was planted the Lorain County AAA Committee, acting under orders from the United States Department of Agriculture, fixed the wheat acreage allotment for the Lorain County Home farm at 25 acres. Said committee, in behalf of the Agricultural Adjustment Administration of the United States Department of Agriculture now informs the Board of County Commissioners of this county that by reason of the excess planting Lorain County is subject to a penalty of 49c per bushel on 223.6 bushels (the marketing excess) and that a marketing card will be withheld from Lorain County unless Lorain County pays the sum of $109.56 to the Secretary of Agriculture of the United States as a penalty or gives a bond in that amount conditioned that 225 bushels of wheat, the property of Lorain County, will be locked up and not used.
>
> Since the wheat marketing card is withheld until said penalty is paid or bond given, it is impossible for Lorain County

to use its 1941 wheat crop. No miller will grind any wheat owned by Lorain County into flour until such a wheat marketing card is furnished.

I hereby respectfully solicit your opinion as to whether or not the United States Government may lawfully impose such a penalty upon this subdivision and whether it may lawfully restrict the said acreage of a county owned farm, the entire crop of which is used for governmental purposes under the laws of this state.

I further solicit your opinion for a suggested remedy in the event that you determine such regulations and restrictions to be unconstitutional. The present stock of flour at the County Home is now about depleted and unless the above referred to wheat can be ground into flour, it will become necessary to buy flour on the market."

The penalty or tax sought to be enforced against the wheat referred to in your inquiry purports to be imposed under authority of the Agricultural Adjustment Act of 1938, enacted by Congress, as amended on various occasions, but more particularly by Public Law 74 as enacted by the Seventy-seventh Congress, approved May 26, 1941.

Such act provides in substance that the Secretary of Agriculture, not later than July 15th of each year, shall proclaim the national acreage allotment for the next crop of wheat (Ti. 7, Sec. 1332, USC), which national acreage shall be apportioned by him among the states and counties thereof as prescribed in Section 1334 of Title 7, USC, and, through local committees, among the farms of the counties, as also prescribed in such section.

Section 1335 of such title authorizes the Secretary of Agriculture to determine, not later than May 15th of each year, whether the total supply of wheat exceeds the normal year's domestic consumption and exports by more than 35 per centum and, if so, to fix the "marketing quota in terms of a total quantity of wheat and also in terms of a marketing percentage of the national acreage allotment for the current crop which he determines will, on the basis of the national average yield of wheat, produce the amount of the national marketing quota," and further defines "national marketing quotas," and, as amended in Public Law 74, above referred to, defines "farm marketing quotas."

Paragraph "(2)" of Public Law 74, above referred to, which amends or supersedes Section 1339 of Title 7, USC, provides that:

> "During any marketing year for which quotas are in effect, the producer shal be subject to a *penalty on the farm marketing excess* of wheat. The rate of penalty shall be 50 percentum of the basic rate of the loan on the commodity for cooperators for such marketing year under section 302 of the Act (Ti. 7, USC, sec. 1302) and this resolution." (Emphasis added.)

The "marketing year" above referred to runs from July 1 of one calendar year to June 30 of the next succeeding calendar year (See Sec. 1301, Ti. 7, USC). The term "farm marketing excess" is defined in paragraph (1) of such Public Act as follows:

> "Notwithstanding the provisions of the Agricultural Adjustment Act of 1938 as amended (hereinafter referred to as the Act) —
>
> (1) The farm marketing quota under the Act for any crop of wheat shall be the actual production of the acreage planted to wheat on the farm, less the normal production or the actual production, whichever is the smaller, of that acreage planted to wheat on the farm which is in excess of the farm acreage allotment for wheat. * * *
>
> The normal production, or the actual production, whichever is the smaller, of such excess acreage is hereinafter called the 'farm marketing excess' of * * * wheat * * * . For the purposes of this resolution, 'actual production' of any number of acres of * * * wheat on a farm means the actual average yield of * * * wheat * * * for the farm times the number of acres."

The basic rate of the loan on wheat to cooperatives by the "Commodity Credit Corporations" is described in paragraph (b) of Section 1302 of Title 7, USC, as follows:

> "The Corporation is directed to make available to cooperators loans upon wheat during any marketing year beginning in a calendar year in which the farm price of wheat on June 15 or at any time thereafter during such marketing year, is below 52 per centum of the parity price at any such time, or the July crop estimate for wheat is in excess of a normal year's domestic consumption and exports, at rates not less than 52 per centum and not more than 75 per centum of the parity price of wheat at the beginning of the marketing year. In case marketing quotas for wheat are in effect in any marketing year, the Corporation is directed to make available, during such marketing year, to non-cooperators, loans upon wheat at 60 per centum of the rate applicable to cooperators. A loan on wheat to a noncooperator shall be made only on so much of his wheat as woud be subject to penalty if marketed."

The basic rate of the loan for cooperators has been fixed by the Secretary of Agriculture for the marketing year 1941 at 98 cents per bushel, thus establishing the penalty rate of 49 cents per bushel on the farm marketing excess (See United States Department of Agriculture, Agricultural Adjustment — Regulations Pertaining to Wheat Marketing Quotas for the 1941 Crop of Wheat — Wheat — 507. Issued May 31, 1941, sec. 701.)

From your inquiry, it seems that while the county farm planted 34.2 acres of wheat while the acreage allotment therefor was fixed by the local committee for the farm at twenty-five acres and the local committee determined that the "marketing excess" of such farm was 223.6 bushels, you are not desirous of marketing any portion of the yield but intend to use the entire crop for farm consumption.

Under authority of Section 1375, Title 7, USC, which reads:

> "(a) The Secretary shall provide by regulations for the identification, wherever necessary of corn, wheat, cotton, rice, or tobacco so as to afford aid in discovering and identifying such amounts of the commodities as are subject to and such amounts thereof as are not subject to marketing restrictions in effect under this title.
>
> (b) The Secretary shall prescribe such regulations as are necessary for the enforcement of this title."

The Secretary of Argiculture has provided certain regulations which have been referred to above. Section 501 of such regulations provides the circumstances under which a marketing card will be issued, and reads:

> "The county committee shall issue a marketing card (form wheat 511) to the operator and, unless the county committee finds that it will not serve a useful purpose, to other producers on each farm on which wheat is harvested in 1941 and for which (1) no farm marketing excess is determined, (2) the penalty on the farm marketing excess has been paid by the producer as provided in Sec. 703, or by any buyer, as provided in Sec. 704, (3) the farm marketing excess has been stored, as provided in Sec. 708, or (4) the amount of the farm marketing excess has been delivered to the Secretary of Agriculture through the county committee, as provided in Sec. 709. Each marketing card shall be serially numbered and shall show (1) the names of the State and county and code number thereof and the serial number of the farm, (2) the signature of a member of the county committee, (3) the name and address of the producer to whom

> issued, (4) the counter-signature of the producer to whom the card is issued, or his duly authorized agent, and (5) any other information which the county committee considers to be necessary in identifying the farm for which the marketing card is issued. A marketing card shall not be issued to any producer on a farm for which measurements cannot be made as provided in Sec. 302, nor to any producer not eligible to receive a card under this section, except as provided in Sec. 901 to 905, inclusive."

Section 601 thereof provides:

> "Each producer of wheat and each intermediate buyer shall, at the time he markets any wheat, identify the wheat to the buyer or transferee in the manner hereinafter provided as being subject to or not subject to the penalty and the lien for the penalty provided in the Act and Resolution."

Sections 602 and 603 specify the uses of the "marketing cards." Sections 604 and 704 then provide, in effect, that, as to wheat purchased from a seller who has not indentified the wheat by means of a "marketing card," the purchaser shall be liable for the penalty above referred to. Sections 702, 703 and 705 specify the method of payment of the penalties and that they shall be liens on all of the wheat of the producers until paid. Section 708 of such regulations provides, in effect, that, if the "marketing excess" of wheat is stored in escrow in a warehouse, the penalty need not be paid thereon while so stored, and further permits the retention of such "marketing excess" by the producer in his own storage bins or space upon giving a "good and sufficient bond of indemnity" as security for the payment of the penalty.

Section 1346 of Title 7, USC, purports to give the federal district courts jurisdiction of actions to collect such penalties, "in addition to, and not exclusive of, any of the remedies or penalties under existing law."

In your letter, you advise that flour millers will not grind the wheat owned by the county until the "marketing card" is exhibited. An examination of not only the act as amended but of the regulations promulgated by the Secretary of Agriculture fails to disclose any requirement of obtaining a "marketing card" or the payment of a penalty unless the grain grown by the producer is to be *marketed.* Section 1301 of Title 7, USC, defines "marketing" as follows:

> " 'Marketed,' 'marketing,' and 'for market' shall have cor-

> responding meanings to the term 'market' in the connection in which they are used."

Such section further defines "market" as follows:

> " 'Market,' in the case of * * * wheat, means to dispose of, in raw or processed form, by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos, and, in the case of * * * wheat, by feeding (in any form) to poultry or livestock which, or the products of which, are sold, bartered, or exchanged, or to be so disposed of, but does not include disposing of any such commodities as premium to the Federal Crop Insurance Corporation under title V."

Since the penalty which was imposed by Section 1339, Title 7, USC, was upon "any farmer who * * * markets wheat in excess of," etc., and the act as amended in Public Law 74 of the Seventy-seventh Congress does not attempt to impose a penalty for any other act than the marketing of the wheat produced, it would seem that under the definition above quoted no penalty is attempted to be imposed, either by the statute or the regulations, upon the growth of wheat for the consumption by the inmates of the Lorain County Home, or by the animals or poultry raised thereon unless they or their products are sold or are intended to be sold. However, in the definition of the term "market," above set forth, you will note that "marketing" includes bartering or exchanging. If, therefore, it is the custom of the County Home to haul the wheat to the mill and to exchange a number of bushels of wheat for a number of barrels of flour, such transaction might possibly be construed to come within the terms "barter" or "exchange." If, however, the County Home hauls a quantity of wheat to a mill and for a monetary consideration employs the miller to grind or process the wheat into fluor, bran and middlings or shorts, it would seem that, under the definition contained in the statute, there would be no marketing of the wheat and no requirement of law either for a marketing card or the incurring of a penalty. As I have above pointed out, the penalty is upon the marketing of wheat produced by a farm, which produces a "farm marketing excess," and not upon the consumption of wheat so produced.

Such statute and regulations, when the broadest import is given to its language, would seem to indicate an intent to impose a penalty, when a "marketing excess" has been produced, if any part of the grain is sold, bartered, exchanged or fed to livestock or poultry raised with a view to

profits either from the sale of such animals or fowls. Likewise, there are no specific provisions in the act purporting to exempt the state and its subdivisions from the effect of the act.

In the case of Mulford v. Smith, 307 U.S., 38, the Supreme Court, in considering the question of the constitutionality of the Agricultural Adjustment Act of 1938, made the following observations concerning the nature of the act under consideration.

> "The statute does not purport to control production. It sets no limit upon the acreage which may be produced and imposes no penalty for the planting and production of tobacco in excess of the marketing quota. It purports to be solely a regulation of interstate commerce, which reaches and affects at the throat where tobacco enters the stream of commerce, — the warehouse."

In such case the court upheld the constitutionality of the act concerning all sales of tobacco to warehouses in Georgia for the stated reason that:

> "In markets where tobacco is sold to both interstate and intrastate purchasers it is not known, when the grower places his tobacco on the warehouse floor for sale, whether it is destined for interstate or intrastate commerce. Regulation to be effective, must, and therefore may constitutionally, apply to all sales."

The court further on page 48 says:

> "The provisions of the Act under consideration constitute a regulation of interstate and foreign commerce within the competency of Congress under the power delegated to it by the Constitution."

While the court had under consideration in such case the provisions of the act with reference to "marketing quotas" as to tobacco, it would seem that, since the provisions of the act with respect to "marketing quotas" as to wheat are in all material respects similar, the use of similar arguments would lead the court to the same conclusion with respect to the provisions of the act concerning wheat.

In the dissenting opinion, the members of the court joining therein took the position that "the penalty is laid on the farmer to prevent production in excess of his quota. It is therefore invalid." The majority opinion does not disagree with the invalidity of the act if it were to so impose the penalty, but differed as to the major premise and held that the

penalty was imposed upon the marketing of the product under such circumstances that it might pass into interstate commerce. In other words, the first act of commerce is the sale for purposes of commerce or transportation.

It should be borne in mind that the Agricultural Adjustment Act of 1938 was enacted after a prior law, allegedly enacted for the same purpose, had been held to be in excess of the powers of Congress. The Supreme Court in so holding has laid down certain principles by which such type of legislation must be measured. In the report of the case of United States v. Butler, 297 U.S., 1, as reported in 80 L.Ed., 477, the following statements are found in the headnotes:

> "8. The Federal government is one of delegated powers; and has only such as are expressly conferred upon it and such as are reasonably to be implied from those granted."
>
> "16. The Federal Agricultural Adjustment Act of May 12, 1933, in setting up a plan to regulate and control agricultural production, unconstitutionally invades the reserved rights of the states."
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> "17. The attainment by Congress of a prohibited end may not be accomplished under the pretext of the assertion of powers which are granted."
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> "20. Contracts with agriculturalists for the reduction of acreage and the control of production, being outside the range of Federal power, cannot justify appropriations and expenditures for such purpose."
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> "21. A widespread similarity of local conditions cannot confer upon Congress powers reserved to the states by the Federal Constitution."
>
> "22. Where there is no power in Congress to impose an exaction, it cannot lawfully ratify or confirm the imposition of such exaction by an executive officer."

After that act was held to be unconstitutional, certain amendments were added by the Act of August 24, 1935. In Rickert Rice Mills, Inc., v. Fontenot, 297 U.S., 110, the act as so amended was held to be unconstitutional. In this case, the court specifically points out that the regulation of agricultural production is not within the power of Congress (p. 113). It would thus appear that since the cases of United States v. Butler, supra, and Rickert Rice Mills, Inc., v. Fontenot, supra, hold that the

power to regulate production of agricultural products is not possessed by the Federal Government, and since the case of Mulford v. Smith, supra, upheld the present act upon the theory that the law had nothing to do with the production of farm products but only attempted to regulate marketing of products which might find their way into interstate commerce, such law cannot be construed as requiring a county to obtain a marketing certificate concerning wheat which it raises and uses as food for the inmates who are its charges, nor as imposing a penalty upon the production of wheat.

It should be remembered, however, that if an act may be so construed as not to render it in conflict with constitutional provisions, it is the duty of the court so to do, even though the construction given is not the most obvious one from the language used. Nebraska v. Smith, 35 Neb., 13, 24; Colwell v. May's Landings, etc., Co., 19 N.J. Eq., 245, 249; 6 R.C.L. 78-79, Section 77 — Constitutional Law.

There is at least grave doubt whether under the system of government guaranteed under the Constitution of the United States, it is within the power of the Federal Government to impose a regulation upon any of the states or their political subdivisions with respect to the use of their governmental and sovereign powers. As was stated by Mr. Justice Nelson in Buffington v. Day, 11 Wall., 113; 20 L.Ed., 122:

> "It is a familiar rule of construction of the Constitution of the Union, that the sovereign powers vested in the state governments by their respective constitutions, remain unaltered and unimpaired except so far as they were granted to the Government of the United States. That the intention of the framers of the Constitution in this respect might not be misunderstood, this rule of interpretation is expressly declared in the tenth article of the amendments, namely: 'The powers not delegated to the United States are reserved to the States respectively, or to the people.' The Government of the United States, therefore can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication."

The question arises many times in the construction of tax or revenue laws enacted by Congress which are broad enough in terms to impose a tax upon the state and its subdivisions. I believe that we will be unable to find a single case holding that it is within the power of the Federal Government to tax either the property of the state or of its political sub-

divisions when used for governmental purposes or to tax any of the functions of such government or its agencies without its express consent. On the other hand, the decisions of the Supreme Court of the United States which have held that the Federal Government may not impose such taxes upon the state or its political subdivisions are multitudinous and are uniform since the adoption of the Federal Constitution.

McCullough v. Maryland, 4 Wheat., 316;

Buffington v. Day, 11 Wall., 113;

Wilcutts v. Bunn, 282 U.S., 216;

Pollack v. Farmers' Loan & Trust Company, 157 U.S., 429, 584-586;

National Life Insurance Company v. United States, 277 U.S., 508, 521.

The reason for such conclusions of such court is aptly stated by Mr. Justice Nelson in Buffington v. Day, supra, at page 126, as follows:

> "The relations existing between the two governments are well stated by the present Chief Justice in the case of Lane Co. v. Oregon, 7 Wall. 76 (74 U.S. XIX, 104) 'Both the States and the United States,' he observed, 'existed before the Constitution. The people, through that instrument, established a more perfect union, by substituting a national government, acting with ample powers directly upon its citizens, instead of the Confederate Government, which acted with powers, greatly restricted, only upon the States. But, in many of the articles of the Constitution, the necessary existence of the States, and within their proper spheres, the independent authority of the States is distinctly recognized. To them nearly the whole charge of interior regulation is committed or left; to them, and to the people, all powers, not expressly delegated to the National Government, are reserved.' Upon looking into the Constitution it will be found that but a few of the articles in that instrument could be carried into practical effect without the existence of the States.
>
> Two of the great departments of the government, the Executive and Legislative, depend upon the exercise of the powers, or upon the people of the States. The Constitution guarantees to the States a republican form of government, and protects each against invasion or domestic violence. Such being the separate and independent condition of the States in our complex system, as recognized by the Constitution, and the existence of which is so indispensable, that, without them, the General Government itself would disappear from the family of nations, it would seem to follow, as a reasonable, if not a necessary consequence, that the means and instrumentalities employed for carrying on the operations of their governments for preserving their existence,

and fulfilling the high and responsible duties assigned to them in the Constitution, should be left free and unimpaired; should not be liable to be crippled, much less defeated by the taxing power of another government, which power acknowledges no limits but the will of the legislative body imposing the tax. And, more especially, those means and instrumentalities which are the creation of their sovereign and reserved rights * * * .

It is admitted that there is no express provision in the Constitution that prohibits the General Government from taxing the means and instrumentalities of the States, nor is there any prohibiting the States from taxing the means and instrumentalities of that government. In both cases the exemption rests upon necessary implication, and is upheld by the great law of self-preservation; as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government. Of what avail are these means if another power may tax them at discretion?

But, notwithstanding the sanction of this taxation by a majority of the court, it is conceded, in the opinion (Veazie Bk. v. Fenno, 8 Wall. 533), that 'the reserved rights of the States, such as the right to pass laws; to give effect to laws through executive action; to administer justice through the courts, and to employ all necessary agencies for legitimate purposes of State Government, are not proper subjects of the taxing power of Congress.' This concession covers the case before us, and adds to the authority of this court in support of the doctrine which we have endeavored to maintain."

In Wilcutts v. Bunn, 282 U.S., 216, 75 L.Ed., 304, the court, in holding that the obligations of the political subdivisions of the state could not constitutionally be made subject to taxation by the Federal Government, reviews the many former decisions of the court and points out the reason for holding such tax beyond the power of the Federal Government. Such reason is, to state it succinctly, that the Federal Government may not impose any direct burden, however slight, upon the state government or upon its political subdivisions in the performance of its or their governmental functions. If the reasoning of the Supreme Court, in such case and the cases therein cited, be correct, it is difficult to perceive by what authority the Federal government may impose a penalty upon either the state government or its political subdivisions concerning the performance of their governmental functions.

It has been consistently held that the maintenance and operation of penal institutions and farms by the state and its political subdivisions is a governmental or sovereign function. See 6 McQuillin, Municipal Cor-

porations, 2d Ed., §§2795-2796.

An examination of the provisions of the statute will disclose no language which indicates any intent on the part of Congress to make the act applicable to the state or its subdivisions. The only indication of an intent of anyone to construe the act is contained in Section 101 of the regulations promulgated by the Secretary of Agriculture. Such section, in so far as material, reads:

> "As used in these regulations and in all forms and documents in connection therewith, unless the context or subject matter otherwise requires, the following terms shall have the following meanings * * * .
>
> (15) PERSON: An individual, partnership, joint-stock company, corporation, association, trust, estate, or other legal entity, or a State or an agency thereof. * * * "

In view of the decisions of the Supreme Court of the United States, above cited, it would scarcely seem that the Secretary of Agriculture could have intended, by the use of such definition, to construe the act as being applicable to the state or any of its subdivisions when a direct burden, such as requiring a marketing card, storage of wheat in escrow or under bond, or imposing a penalty against them when they are exercising their sovereign or governmental functions in the growing of the wheat.

You further inquire as to the remedy to be pursued by the county to procure the milling of its wheat in the event that the miller refuses to grind the wheat until a marketing card has been exhibited. It is to be recognized that the operator of a flour mill is engaged in a private business and being so engaged he may conduct such business on such terms and conditions as he may deem advisable, in so long as such conduct does not infringe upon some public law or private right. My examination of the statutes does not disclose any provision of law which requires an operator of a flour mill to mill flour for any customer who may present himself. It would seem that so long as the governments of Ohio and the United States function under the present Constitutions, a miller may not be compelled to operate his mill for the milling of flour unless he desires so to do.

In view of the fact, as above pointed out, that the Tenth Article of the Amendments to the Federal Constitution states that all powers not

expressly granted by the states to the Federal Government are reserved to the states, and such amendment was added in order to assure the adoption of the Constitution, and the further fact that the United States Supreme Court has construed the act in question as above set forth, I cannot believe that the Federal Department of Agriculture has or will give advice to millers to the effect that the county wheat may not be ground by them for county use, without penalty payments, regardless of the amount of acreage production.

Specifically answering your inquiries, it is my opinion that:

1. The Agricultural Adjustment Act of 1938, as amended, does not regulate the amount of wheat produced on a farm, but regulates only the marketing of wheat in interstate and foreign commerce (Mulford v. Smith, 307 U.S., 38).

2. Such act, in terms, imposes no penalty upon the production of wheat upon a farm, regardless of the number of acres used therein or the amount of the yield when the producer consumes the wheat in raw or manufactured form, unless the product is fed to or consumed by animals or poultry, which are or their products are or are intended to be placed in commerce.

3. Under the terms of such act, there is no requirement for the obtaining of a "marketing card" or the payment of a penalty where a county home raises wheat to be ground into flour for the feeding of its inmates or patients, even though the acreage tilled or yield produced thereon is in excess of the "farm marketing quota" as determined under authority of the Secretary of Agriculture of the United States.

4. Neither under regulation "No. 507" issued by the Secretary of Agriculture nor under such act are there any requirements of obtaining a "marketing card" by the county in order to have the wheat ground, without penalty, for county home consumption, nor is there imposed upon the miller any penalty for processing the wheat for such purpose without exhibiting a marketing card, since such processing and use do not constitute "marketing" as defined in the act.

Respectfully,

THOMAS J. HERBERT,
Attorney General.