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# Agri-Mark's Cooperative Myth

by Martin Harris Jr.

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If you thought that Vermont is still a dairy state, think again. A month or so ago, a court decision pulled back the curtains to expose the Wizard of Oz, so to speak, and revealed that Vermont's largest milk handler, Agri-Mark, is no more a farmer-owned cooperative than are Dorothy and her band of fellow travelers. Yet, this decision of the Delaware Supreme Court (Agri-Mark is, in fact, a Delaware corporation) received virtually no coverage in the Vermont press. Try to imagine, if possible, the attention such an issue would have raised back in George Aiken's day, when there were, in fact, more cows than people in the state.

Here's the background: About four years ago, a young couple in Hardwick running a real family farm and shipping their milk through Agri-Mark made an informal request of 'their' cooperative. At a time of farm-gate milk price cuts, they wanted to know the salaries of the top Wizards in the Emerald City into which they had paid up-front monies — equity participation — to join. The response from the Wicked Witch in administration was swift: "You're not entitled to know."

As it turned out, it wasn't the best way to deal with a couple of native Vermonters keenly aware of their own concepts of freedom of information.

Over the next four years, here's what they learned.

- Agri-Mark is a Delaware stock corporation.
  - Agri-Mark is solely funded by member-farmers' money.
  - Agri-Mark was incorporated with 200,000 shares of stock, but only 15 shares are issued, one to each regional director. Members do not get any Agri-Mark stock for their equity investment.
  - Delaware law gives investors certain rights only if they are also stockholders of record. For example, one share gives its holder the right to view the corporate books and records; be informed of the top five executive salaries; and view the list of stockholders.
- If one is not a stockholder (director) of Agri-Mark, one has none of these rights. All Agri-Mark members, with the exception of the regional directors, are not stockholders even though they have purchased equity in the corporation just as a shareholder in IBM would purchase shares in that corporation and would be entitled to the above privileges of share holding.
- Agri-Mark prevents farmers from organizing to change its bylaws (so that stock would be issued to farmer-members) by keeping its [member] list secret from even its own voting representatives.
  - The "equity retains" that Agri-Mark requires of its farmers are invested in value-added processing facili-

ties, and yet Agri-mark pays its farmers the same price, or a lower price, for milk as any other handler which does not require this investment.

- Agri-Mark is a dues-paying member of the International Dairy Foods Association, a decision taken without vote by the members. IDFA is the entity which sued Vermont's BST labeling law, at a cost of more than \$250,000 to Vermont and an unknown amount to IDFA's dues-paying members. How much are IDFA annual dues? Ben & Jerry's was paying in \$11,000 a year until quitting because, in that corporation's opinion, IDFA was working against farmers. (IDFA has also opposed the New England Regional [Dairy] Compact.)

Whence cometh this list of complaints and revelations about Agri-Mark? From Forrest Foster and Karen Shaw, the two Agri-Mark members who, at first, wanted only to know how much the president of the corporation was being paid. It was they who sought justice, first from the organization in which they thought their role was one of "farmer-owners", to quote from Agri-Mark's advertising; then to the Vermont courts, where they enjoyed a temporary victory; and then to the Delaware courts, which demonstrated all too clearly why so many shrewdly managed corporations choose to be registered there.

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Here's their conclusion, based on their bitter experience: "The incorporation of Agri-Mark in Delaware with bylaws preventing stock being issued to the farmer-investors was a premeditated (and successful) method of separating farmers from direct control of, and information about, Agri-Mark."

I have nothing much to add to this sorry tale, except to report that Agri-Mark continues to advertise itself over the airwaves as a "farmer-owned" cooperative; that it continues to function as before, its penchant for secrecy upheld by the courts of Delaware; and that, to quote from U.S. Supreme Court Justice Oliver Wendell Holmes, "There's frequently more justice outside of a courtroom than inside."

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