questions occur to you, please communicate with us again.

Very truly yours,
FREDERICK N. SCATENA, M. D.,
Secretary-Treasurer.

Concerning San Francisco Ordinance Requiring Pasteurization of Milk:

(COPY)

JOHN J. O'TOOLE
City Attorney
San Francisco, May 2, 1944.

Dr. J. C. Geiger,
Director of Health
Health Center Building,
San Francisco 2, Calif.
Dear Doctor Geiger:

In answer to your request concerning the most recent decision in the case of Natural Milk Producers Association of Northern California v. City and County of San Francisco, the Advance Reports of the California Supreme Court have just reached this office and a copy of the opinion is enclosed.

As you know, the original case, which is reported in 20 Cal. (2d) 101, upheld the San Francisco ordinance requiring the pasteurization of all milk sold in the city and county, on the grounds that such ordinance was not contrary to the sections of the Agricultural Code, but rather merely imposed additional restrictions and higher standards than those required by the state law. Following that decision the plaintiff took the case to the Supreme Court of the United States, which court determined that there were no Federal questions involved and hence referred the case back to the Supreme Court of California for such further proceedings as the latter might deem appropriate. In the memorandum opinion enclosed, the Supreme Court of this state reaffirmed and adopted its former opinion cited above.

I believe this answers your problem, but if anything further is required by you, please notify me.

Yours very truly,
AL SKELLY, *Deputy City Attorney.*

* * *

(COPY)

(S.F. No. 16105. In Bank. Apr. 13, 1944.)

Natural Milk Producers Association of California (a Corporation) Appellants, v. City and County of San Francisco, Respondents.

(For former opinion see Cal. 2d 101.)

THE COURT. The above entitled cause was heard and determined by a decision of this court on April 2, 1942 (Natural Milk etc. Assn. v. City etc. of San Francisco, 20 Cal. 2d 101 (124 P. 2d 25), in which decision the judgment of the trial court was affirmed. Thereafter plaintiffs appealed to the Supreme Court of the United States. That court made the following order: "In this case appellants contend that the San Francisco Milk Ordinance violates the Fourteenth Amendment because it requires non-pasteurized raw milk sold in San Francisco to be certified by, and to conform to standards prescribed by, the Milk Commission of the San Francisco Medical Society, instead of by a public board or officer, while at the same time prohibiting the sale of all other non-pasteurized milk, including 'guaranteed raw milk' which appellants allege is the same as certified raw milk. Subsequent to the trial of the case, the Milk Commission of the San Francisco Medical Society determined that non-pasteurized milk could not be certified by it as free from harmful bacteria, and promulgated an order accordingly, effective January 15, 1939. This fact, which apparently was not called to the attention of the Supreme Court of California, renders moot the federal questions raised by appellants, since all milk sold in San Francisco, not certified by the Milk Commission of the Medical Society, is required by the ordinance to be pasteurized and since appellants do not by this suit challenge the validity under the Fourteenth Amendment of the pasteurization requirement. In order that the state court may make proper disposition of the case in the light of the fact that the federal questions cannot be decided here, we vacate the judgment, without costs to either party in this Court, and remand the cause to the Supreme Court of California for such further proceedings as it may deem appropriate."

The instant action is one by plaintiffs seeking to have enjoined the enforcement of an ordinance of the City and County of San Francisco on various constitutional grounds. As evident from the foregoing order of the Supreme Court of the United States the issue of whether or not the ordinance was discriminatory because it permitted the sale of certified milk, a raw milk, was considered moot because since the trial of the action the Milk Commission of the San Francisco Medical Society adopted a resolution requiring certified milk to be pasteurized, and further, that no claim was made by plaintiffs in the Supreme Court of the United States that a law requiring all milk to be pasteurized is unconstitutional.

Plaintiffs again advance substantially the same arguments as heretofore made before this court. We adhere to the views expressed in our former opinion and adopt them now as the decision of this court.

Plaintiffs do not desire to sell certified milk in San Francisco. They assert that they should be entitled to sell raw milk. The fact that the Milk Commission made its pasteurization requirement for certified milk does not alter the result. Whether or not it had the authority under the ordinance to require pasteurization of certified milk (the ordinance appears to indicate that certified milk may be raw milk) need not be decided inasmuch as plaintiffs are not interested in selling certified milk, raw or pasteurized. The trial court denied the injunction and as we adhere to our former decision there is no ground for reversing the judgment of the trial court.

For the foregoing reasons we hereby adopt our former opinion and affirm the judgment of the trial court.

Concerning "Need of Professional Nurses":

Federal Security Agency
U. S. PUBLIC HEALTH SERVICE
Division of Nurse Education

Subject: "Professional Nurses Are Needed."
From: Lucile Petry, Director, Division of Nurse Education.

A copy of brochure, "Professional Nurses are Needed" is enclosed for your information and use. This publication has been issued jointly by the U. S. Office of Education and Division of Nurse Education, U. S. Public Health Service. It is designed to serve as a guidance aid.

Because of the paper shortage, only a limited number of copies could be printed. It is suggested that requests for additional single copies be directed to the U. S. Office of Education, Washington, D. C. . . .

Concerning Scope of a Malpractice Insurance Policy:

(COPY)

Dear Doctor:

I return to you herewith malpractice insurance policy issued by the company.

Section II, B of the policy, providing "The Company shall have the right to settle any claim or suit at its own cost, * * *", in my opinion would give the company the absolute right to settle any claim or action which might be brought against you either with or without your consent and notwithstanding any action which could be taken by the legal counsel of the "Medical Society of the State of California."

The standard form of policy approved by the Society contains an express provision that the insurance carrier shall not settle or compromise any claim or suit without the written consent of the assured. As the above quoted section of the policy is the only reference to settlements contained therein, you would have no right to insist that the company defend the action if they should desire to settle against your wishes.

If I can be of further help, please let me know.

Very truly yours,
HARTLEY F. PEART,