

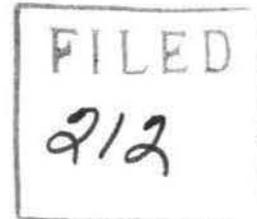
AGRICULTURE:  
RULES AND  
REGULATIONS:

Pursuant to Section 196.886(1), RSMo 1959, no person, firm, association or corporation shall manufacture and sell ice cream and related frozen food products in containers unless each container shall bear the name of the manufacturer on the body or lid of such container, and that the Department of Agriculture is not authorized to promulgate a regulation which would allow a code number or other technical symbol to be placed on the container instead of the name of the manufacturer.

April 21, 1970

OPINION NO. 212

Mr. Dexter D. Davis, Commissioner  
Missouri Department of Agriculture  
Jefferson State Office Building  
Jefferson City, Missouri 65101



Dear Mr. Davis:

This is in response to your request for an official opinion on the question which you submitted as follows:

"The Department of Agriculture has promulgated a regulation stating that, 'All mutiple plant companies using a single address must identify each package as to the licensed plant where it was frozen. A code or symbol filed with the Department can accomplish this purpose.'

"I would like to know it if would be permissible for the Department of Agriculture to change the above quoted regulation so to allow persons to use a code number to identify the name of the manufacturer as well as the location of the plant, instead of writing out the name of the manufacturer and using a code number for the address of the plant as is now done."

Section 196.886, RSMo 1959, to which you refer in your opinion request provides in part as follows:

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"No person, firm, association or corporation shall:

"(1) Manufacture and sell ice cream, and related frozen food products defined in sections 196.851 to 196.895 in containers unless each container shall bear the name of the manufacturer on the body or lid of such container; or

\* \* \* \*

"(5) Sell or offer for sale at retail any product defined in sections 196.851 to 196.895 from a fountain, cabinet, or counter, unless there is conspicuously displayed at, on or over the fountain, cabinet, or counter where such product is dispensed, a sign of such form and size as may be prescribed by regulations made by the department of agriculture and which sign shall be legible to the purchaser and shall state the name of the manufacturer of such product;"

It is to be observed that twice in the same section the legislature has directed that the "name of the manufacturer" be displayed in a manner that will enable it to be seen and identified by the purchaser without difficulty. The legislature is presumed to have intended what it has stated directly and unambiguously, and courts may not under the guise of construction, add to or take from the clear and definite terms of a statute. *State v. Pilkinton*, 310 S.W.2d 304-309 (Spr.Ct.App. 1958). Where the language of a statute is plain and unambiguous, there is nothing to construe. *United Air Lines v. State Tax Commission*, 377 S.W.2d 444 (Mo. en banc 1964).

The Department of Agriculture is an administrative agency created by the legislature. Section 261.010, RSMo 1959. Like other administrative agencies, it does not have any jurisdiction or authority except that which the legislature has conferred upon it. *Soars v. Soars-Lovelace, Inc.*, 142 S.W.2d 866 (Mo. 1940). The legislature has conferred upon the Department of Agriculture the authority to make rules and regulations. However an administrative agency, by the adoption of rules and regulations, cannot change the legal meaning of a statute.

An administrative agency must interpret the law as it reads. *State ex rel. St. Louis Public Service Co. v. Public Service Commission*, 34 S.W.2d 486 (Mo. en banc 1930). If an administrative agency did not follow the clear language of a statute but by some theory of construction, attempted to impose its own ideas about

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what it considered best to promote the general welfare, it would be indulging in administrative legislation and invading the province of the legislative branch of the government or of the electorate in amending the law.

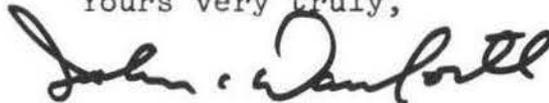
Substitution of a code number for the name of the manufacturer on the body or lid of the container of frozen food products would insert a technical phrase to establish the identity of the manufacturer. If this technical means of identification had been intended by the legislature, it surely would have used language to express such intention. Accordingly, the Department of Agriculture must accept Section 196.886(1) as the legislature wrote it and its meaning is definite and beyond fair debate.

#### CONCLUSION

It is the opinion of this office that pursuant to Section 196.886(1), RSMo 1959, no person, firm, association or corporation shall manufacture and sell ice cream and related frozen food products in containers unless each container shall bear the name of the manufacturer on the body or lid of such container, and that the Department of Agriculture is not authorized to promulgate a regulation which would allow a code number or other technical symbol to be placed on the container instead of the name of the manufacturer.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, L. J. Gardner.

Yours very truly,



JOHN C. DANFORTH  
Attorney General