

FEED:) "Custom-mixed feeds" do not come within provisions of
) Missouri Feed Law, Sections 266.150-266.280, RSMo 1949.
) Feeds compounded by ingredients in proportions repre-
) senting the average requested by various feeders and
AGRICULTURE:) offered or exposed for sale to customers in the ordinary
) course of business as a "custom-made cattle feed" is a
) "commercial-feeding stuff" within the provisions of the
) Missouri Feed Law.

April 21, 1953



Honorable L. C. Carpenter
Commissioner
Department of Agriculture
Jefferson City, Missouri

Dear Mr. Carpenter:

We render herewith our opinion based on your request dated April 7, 1953, which request is as follows:

"Many small dealers have facilities for mixing feeds in small batches, but do not register any products as commercial feeding-stuffs, claiming that all such mixing is done on a custom basis. In many instances the dealer furnishes all the ingredients that go into these mixed products.

"The Missouri Feed Law makes no reference to 'custom-mixed feeds' and our interpretation has been that such mixes were outside the scope of the law. This interpretation is based on the provision that a product must be sold, offered, or exposed for sale before it is considered a commercial feeding-stuff.

"Will you please give us an opinion as to whether 'custom-mixed feeds' come under the provisions of the Missouri Feed Law, and secondly, what should be considered as coming within the meaning of a custom-mixed product.

"As reference, we are attaching a summary of a case which reflects the need for

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defining custom-mixing as it is to be considered in the administration of the Missouri Feed Law."

Attached to your request is a factual situation pointing up the problem of interpretation under the Missouri Feed Law. (Sections 266.150-266.280, RSMo 1949.)

"The Moran Milling Company, Bonne Terre, Missouri, recently began making a cattle feed containing ground corn cobs. Since the Missouri Feed Law prohibits the mixing of any commercial feed with ground or crushed corn cobs, this company mixed this product on a 'custom' basis. The ingredients were supposedly added in amounts to represent the average of the requests of different feeders for such a product and then sold with the bags bearing a tag designating the material as 'custom made cattle feed.' This tag also included a list of the ingredients together with the percent added."

Your first question is whether custom-mixed feeds are included in the term "feed" as used in the said feed law. You state that your department has interpreted the law not to include custom-mixed feeds. In this view we believe you are correct.

The act itself furnishes very little aid in this respect. Section 266.150 provides in part as follows:

"For the purposes of sections 266.150 to 266.280 the following words are defined as follows:

* * * * *

"(5) 'Feed' shall mean commercial feeding-stuffs."

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Section 266.160 then provides:

"The term 'commercial feeding-stuffs' shall be held to include all feeding-stuffs used for feeding livestock and poultry, except whole seeds or grains, the unmixed meals made directly from the entire grains of corn, wheat, rye, barley, oats, buckwheat, flaxseed, kaffir, and milo, whole hays, straws, cotton seed hulls and corn stover, pure corn chops and pure ground ear corn, when the same are not mixed with other materials, but the term shall not apply to other materials containing sixty per cent or more of water."

We believe, however, that other provisions of this act indicate a legislative intent not to include custom-mixed feeds. Sections 266.180-266.220 provide for registration of feeds before the same may be sold. Sections 266.240-266.250 provide for taking of samples and analysis, by the Commissioner of Agriculture or his representatives. These sections contemplate that large quantities of feed of the same formula are to be placed on the consumer's market and are to be offered or exposed for sale to the public generally. Section 266.170 provides for packages of feed to be in standard weights therein specified. It is readily apparent that these provisions would be altogether impracticable as applied to custom-mixed feeds, which would be made up in small quantities on individual order from varying formulas and not placed on the market for sale to the public generally. There would never be any custom-mixed feed on hand, exposed for sale, from which samples of said feed could be taken for analysis as provided in Section 266.240 and Section 266.250.

Secondly, you request some guide by which you can determine what is "custom-mixed feed" and what is "commercial feeding-stuffs" which would be covered by the act. These two phrases have never been judicially defined so that we have any guide lines by which we can separate them. "Custom" is thus defined in Webster's New International Dictionary, Second Edition:

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"CUSTOM, adj. 1. Made or done to order; as custom clothes. 2. Dealing in things made to order, or doing work only when it is ordered; as, a custom shoemaker; a custom mill."

It is difficult to lay down any rule of thumb which will solve every problem arising out of the many possible factual situations.

We believe that the basic test would be: what is being sold--a mixed feed, the end product of ingredients, mixing and grinding; or ingredients, mixing and grinding separately, making separate charges for each? In applying this test various factors, no one of them conclusive, would enter into consideration.

Who furnishes the ingredients? If the miller, this would point toward "commercial feeding-stuffs" -- but certainly the customer could purchase the ingredients from the miller to be put into the feed.

Who furnishes the formula? If the miller, this would point definitely to "commercial feeding-stuff," as opposed to "custom-mixed feed." However, the miller might have a formula which he could recommend to a customer or which a customer might know about and request, which would not necessarily make the feed a "commercial feeding-stuff." On the other hand should the miller advertise and promote his formula, this would tend to indicate that feed mixed in accordance with such formula would not be custom mixed.

Is the feed prepared in advance of the customer's order, in bags or in bulk, and exposed for sale to customers in the ordinary course of business? This would tend most strongly to show that the feed was not custom mixed and would in our opinion be well-nigh conclusive that it was not custom-mixed feed -- although the absence of this feature would not be conclusive that the feed was custom mixed.

Is there a separate charge for ingredients, grinding and mixing where the ingredients are furnished by the miller? An affirmative answer would indicate that the feed was custom mixed; a negative answer that it is commercial feeding-stuff.

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Applying these tests to the factual situation submitted to us, we believe that you were correct in your advice that the feed made by the Moran Milling Company, not compounded on order of a customer, is a "commercial feeding-stuff" within the meaning of the Missouri Feed Law. The ingredients are furnished by the miller, the formula (regardless of the source of the formula or how it was arrived at) was his. The thing being sold was a mixed feed, the end product of ingredients, grinding and mixing, for which no separate charge was being made. It was already ground and mixed, in sacks, in advance of the customers coming into to buy. Presumably, it was offered or exposed for sale to any one coming into the miller's place of business. The fact of the tags being appended showing the ingredients and labelling as a "custom-mixed cattle feed," which one would not expect to find on a sack or sacks of feed prepared on an individual customer's order, also militates against the feed's actually having been prepared on a custom basis.

CONCLUSION

It is the opinion of this office that "custom-mixed feeds" do not come within the provisions of the Missouri Feed Law, Sections 266.150-266.280, RSMo 1949; and that feeds compounded by ingredients in proportions representing the average requested by various feeders and offered or exposed for sale to customers in the ordinary course of business as a "custom-made cattle feed" is a "commercial feeding-stuff" within the provisions of the Missouri Feed Law.

This opinion, which I hereby approve, was prepared by my Assistant, Mr. W. Don Kennedy.

Yours very truly,

JOHN M. DALTON
Attorney General

WDK/fh