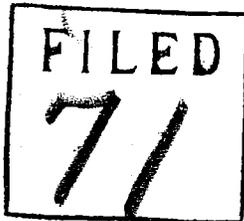


LOCKER PLANT:
UNINCORPORATED ASSN:
AGRICULTURE:



A locker plant operated by an unincorporated association such as the Armstrong Lockerette described in your request is subject in every respect to the law regulating the operation of locker plants, Section 196.450, et seq., RSMo 1949. A locker plant is not required by law to maintain a chill room, a cutting and processing room or a quick or sharp freeze room; nor does the law require that the wrapping or processing of food be done at the locker plant.

July 20, 1953

Mr. Paul L. Porter
Director of Dairy Division
Department of Agriculture
Jefferson City, Missouri

Dear Mr. Porter:

We render herewith our opinion based on your request of May 28, 1953, which request reads as follows:

"The Armstrong Lockerette (Cooperative) is composed of 42 members, with President, Vice-President, Secretary and Treasurer. They have lockers for storage only.

"There is no 'cutting or processing room'; no chill room; or quick or sharp freezing room. Food is processed and wrapped at home or some other place--then put in lockers. This works a hardship on locker plants which try to abide by state regulations.

"This company applied for license and has insurance on lockers. See attached inspection report.

"We respectfully request interpretation of Locker Law in this matter."

In response to our request you have submitted to this office the additional information that the lockers are rented to others than members of the association; that there are forty-five members of the association, each member paying for his locker space at the same rate as nonmembers; that the profits are distributed equally among the forty-five members at the close of the fiscal year; and that the association is not incorporated either as a business corporation or as a co-operative.

Mr. Paul L. Porter

There are several statutes which it will be necessary for us to consider in the course of the opinion. The first is Section 196.450, RSMo 1949, subsection (7), reading as follows:

"(7) 'Locker plant' means a location or establishment in which space in individual lockers is rented for the storage of food;"

We pause here to point out that according to the information which you have supplied to us the Armstrong Lockerette meets this definition.

Section 196.455, RSMo 1949, reads in part as follows:

"196.455. Annual license required.-- It shall be unlawful for any person, firm, copartnership or corporation to operate a locker plant in this state unless such person, firm, copartnership or corporation has secured an annual license therefor from the department. * * *"

The business device by which the Armstrong Lockerette is operated, it appears from the facts stated in your request, is an unincorporated association which has been judicially defined as follows:

"An 'unincorporated association' is an organization composed of a body of persons united without a charter for the prosecution of some common enterprise; it is not a legal entity separate from the persons who compose it. *Meinhart v. Contresta*, 194 N.Y.S. 593, 594."

The first question presented by your request so far as the necessity for the Armstrong Lockerette to obtain a license is whether an unincorporated association is comprehended within the phrase "person, firm, copartnership or corporation," as used in Section 196.455, quoted above.

We believe that it is, either as a plurality of individuals or as a "firm or copartnership."

Section 1.020, RSMo 1949, subsection (7), provides as follows:

Mr. Paul L. Porter

"(7) The word 'person' may extend and be applied to bodies politic and corporate and to partnerships and other unincorporated associations;"

Hence, under this statutory definition the word, "person," used in Section 196.455, could include an unincorporated association.

We believe that the word "firm" also could include an unincorporated association. This word ordinarily denotes a partnership. *Bredhoff v. Lepman*, 181 Ill. App. 247, l.c. 250. However, it often is given a somewhat broader meaning as in *In Re Klein's Estate*, 88 Pac. 798, l.c. 802, 35 Mont. 185.

"In arriving at a conclusion as to the ordinary and popular meaning of the word 'firm,' we naturally first consult the standard dictionaries. Webster defines it thus: The name, title, or style under which a company transacts business, hence a partnership or house, as the firm of Hope & Co. The Century dictionary defines a firm to be a partnership or association of two or more persons for carrying on a business, a commercial house, a concern, also the name or title under which associated persons transact business. * * *"

Indeed, the legislature by using the word "copartnership" in addition to the word "firm" evidently included that the latter word have a broader meaning than partnership.

Nothing appears in the statutes which has the effect of exempting from the operation of the law and applicable regulations a locker plant operated as is the Armstrong Lockerette.

On these premises the Armstrong Lockerette, so far as the application of Sections 196.450 through 196.515, RSMo 1949, is concerned, stands in no different position than other locker plants operated by corporations, partnerships or individuals.

Next, we consider whether the failure to maintain a chill room, a cutting and processing room or a quick or sharp freeze room; or the wrapping or processing of food at some place other than the plant constitutes a violation of the law.

Mr. Paul L. Porter

There is no specific requirement in the law that a locker plant maintain a cutting or processing room, a chill room or a quick or sharp freeze room. The act contemplates that such rooms will be maintained but does not require it. Section 196,490, RSMo 1949, provides as follows:

"Food to be quick frozen before placed in locker.--All food, before being placed in a locker shall be quick or sharp frozen in a quick or sharp freeze room, unless the locker room temperature is maintained at not more than the maximum temperature required by sections 196,450 to 196,515 for a quick or sharp freeze room. No food shall be placed in a locker unless previously inspected by the operator and each portion shall be wrapped and be marked or stamped showing contents, correct locker number and date of wrapping. All fruits and vegetables shall be prepared by an approved method before being quick or sharp frozen."

Thus, under the first portion of this statute, there are two courses open: first, to quick or sharp freeze the food before placing it in the locker room; or second, to maintain the locker room temperature at or below the maximum prescribed by Section 196,485, RSMo 1949, subsection 2, reading as follows:

"2. Temperatures shall be maintained in the respective rooms as follows:

"(2) Quick or sharp freeze room--quick or sharp freeze compartments: Temperatures of ten degrees below zero or lower in rooms where still air cooling is employed and temperatures of zero degrees or lower in rooms where forced air circulation is employed, with a tolerance of ten degrees for either type of installation for a reasonable time after putting fresh food into the freezer;"

If such temperature is maintained in the locker room, there is no requirement that the food be quick or sharp frozen.

Mr. Paul L. Porter

Section 196.485, RSMo 1949, specifies temperature to be maintained in the quick or sharp freeze room, but neither does this Section nor Section 196.450, defining such room, require that there be one in connection with the locker plant. We recognize, of course, if the temperature in the locker room is not at quick-freeze levels, that it will be a practical necessity to maintain a quick-freeze room in connection with the locker plant, in order to obey the law with respect to quick-freezing of food before placing it in the locker. It would not be feasible to quick-freeze it at some other place.

It is not mandatory to maintain a chill room or cutting and processing room. Section 196.450 defines such rooms; and Section 196.485 prescribes temperature requirements for the chill room. As in the case of the quick or sharp freeze room, although the act contemplates the maintenance of such rooms, they are not required.

As to wrapping and processing food, there is no requirement where or by whom it shall be done. If properly done, it may be done at the home of the user or some other place. So, the fact that food deposited in the Armstrong Lockerette is prepared, processed and wrapped at home by the user is no violation of the law -- so long as it is done in compliance with the law as expressed in the latter part of Section 196.490, supra.

CONCLUSION

It is the opinion of this office that a locker plant operated by an unincorporated association, such as the Armstrong Lockerette described in your request, is subject in every respect to the law regulating the operation of locker plants, Section 196.450, et seq., RSMo 1949.

We further conclude that a locker plant is not required by law to maintain a chill room, a cutting and processing room, or a quick or sharp freeze room, nor does the law require that the wrapping or processing of food be done at the locker plant.

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

Yours very truly,

JOHN W. DALTON
Attorney General