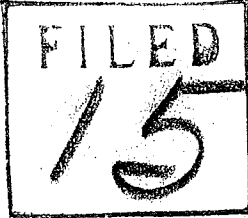


AGRICULTURE:
ICE CREAM:

House Bill 257 enacted by the 68th General Assembly relating to the manufacture and sale of ice cream and related frozen products as defined therein does not relate to the manufacture and sale of other products not defined in said Act.



September 29, 1955

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

Dear Sir:

Reference is made to your request for an official opinion of this office, which request reads as follows:

"In our attempt to interpret House Bill No. 257, a problem has arisen in which your opinion is greatly needed.

"Section 196.855 states as follows: 'For the purpose of this Act the products within its purview are defined as follows, and each definition is so framed to exclude substances not mentioned in the definition and in each instance imply that the product is clean and sound.'

"The above mentioned section continues with a definition of ice cream stating, 'that the content of milk fat and total milk solids are not less than 10% and 20% respectively.' The section continues with a definition of ice milk stating, 'that it contains not less than 2% but not more than 3.5% of milk fat.' Ice milk in the semifrozen state as drawn direct from the continuous freezer for resale as such contains not less than 3.5% but not more than 6% milk fat. Frozen malted milk contains not less than 6% by weight of milk fat and not less than 3% by weight of malted milk.

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"Now the question arises, does this new Law exercise any jurisdiction over a frozen product with a milk fat content ranging from 3.5% to 10% provided, it is not called either ice cream or ice milk?

"Again, does this new Law exercise any jurisdiction over a semifrozen product containing no malted milk and with a milk fat content ranging from 6% to 10%?

"Does this Law make illegal the manufacturing and/or selling of products falling into the above categories?

"To be more specific, an establishment freezes and sells a product that conforms in all respects to the definition and standards of identity for ice milk, except, that it contains 7% milk fat. This product is neither sold, advertised or labeled as ice cream or ice milk."

Section 196,850 relating to the applicability of House Bill 257 as enacted by the 68th General Assembly provides as follows:

"The provisions of this Act shall apply to all ice cream and related frozen food products defined in Section 196.855; and the purpose of this Act is declared to be to secure the wholesomeness and purity of such products and to prevent confusion, fraud and deception in connection with their manufacture and sale and to make unlawful the misbranding and adulteration of such products. Nothing in this act shall be construed to apply to any product of frozen dessert using skim milk or skim milk powder when combined with vegetable fats or oils."

It is to be noted that by the specific provisions of said section said act shall apply to ice cream and related frozen fppd products "defined" in Section 196.855. It is a well known

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rule of statutory construction that the expression of one thing is the exclusion of another. Keane v. Strodman, 323 Mo. 161, 18 S.W. 2d. 896. Applying the rule here we are of the opinion that the provisions of House Bill 257 are applicable only to the products defined in the act and are inapplicable to products which are not therein defined. This interpretation is fully and completely borne out by the following section which provides in part as follows:

"196.855. "For the purpose of this Act the products within its purview are defined as follows, and each definition is so framed to exclude substances not mentioned in the definition and in each instance imply that the product is clean and sound: * * *"(Emphasis ours.)

Section 196.855 defines certain products under the "purview" of the act. While we do not deem it necessary to set said definition section out at length herein we do wish to refer to some of the definitions insofar as they are pertinent to the question at hand. "Water Ice" as defined does not contain any milk fat or milk solids. "Sherbert" as defined may contain from 0 to 2 $\frac{1}{2}$ % by weight milk fat, and from 0 to 5% total milk solids. "Ice milk" in the frozen state is defined as containing not less than 2% nor more than 3 $\frac{1}{2}$ % milk fat and not less than 11% total milk solids. "Ice milk" in the semifrozen state as drawn direct from the continuous freezer for resale as such is defined as containing not less than 3 $\frac{1}{2}$ % nor more than 6% of milk fat and not less than 14% total milk solids. "Frozen malted milk" is defined as containing not less than 6% by weight of milk fat. "Ice cream" is defined as containing in no event less than 8% milk fat nor less than 16% total milk solids. "French Ice Cream." "Frozen Custard," "French Custard Ice Cream" as defined all contained the same milk fat and total milk solids as ice cream, supra.

You first inquire whether House Bill 257 applies to a "frozen" product with a milk fat content ranging from 3 $\frac{1}{2}$ % to 10% provided it is not called either ice cream or ice milk. From its definition herein noted such a product might be "Ice cream" which might, under the act, contain as low as 8% milk fat. If such product would not meet the definition of "Ice cream" then we are of the opinion that it would not be subject to the provisions of House Bill 257 provided it was not labeled or sold as a product defined in the act.

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You next inquire whether the provisions of House Bill 257 apply to a "semifrozen" product containing no malted milk and containing a milk fat content ranging from 6 to 10%. The only product not containing malted milk defined in the act as being in the semifrozen state is "Ice milk" which may not contain more than 6% milk fat. In view of this fact, we are of the opinion that House Bill 257 would not apply to a product in the semifrozen state containing more than 6% milk fat and which does not contain malted milk.

Lastly, you inquire whether a product, which conforms in all respects to the definition and standards of ice milk, except that it contains 7% milk fat, is subject to the provisions of House Bill 257 where such product is not sold, advertised or labeled as ice cream or ice milk. As has been pointed out, ice milk in the frozen state is defined as containing not more than 3½% milk fat and ice milk in the semifrozen state as drawn direct from the continuous freezer for resale is defined as containing not more than 6% milk fat.

In view of these definitions and in view of the fact that by the specific provisions of the Bill substances not mentioned are excluded, we are of the opinion that such a product as you refer to, is not subject to the provisions of House Bill 257.

CONCLUSION

It is, therefore, the opinion of this office that House Bill 257, enacted by the 68th General Assembly, does not relate to a "frozen" product with a milk fat content ranging from 3½% to 8%, nor does said Bill pertain to a semifrozen product, containing no malted milk, with a milk fat content ranging from 6 to 10%.

We are further of the opinion that a product that conforms in all respects to the definition and standards of identity for "ice milk" except that it contains 7% milk fat, is not subject to the provisions of House Bill 257 so long as it is not sold, advertised or labeled as ice cream or ice milk.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Donal D. Guffey.

Yours very truly,

John M. Dalton
Attorney General

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