

DIVISION OF HEALTH:  
REGULATIONS REGARDING  
SANITATION IN SLAUGHTER-  
ING PLANTS:

The regulations submitted by the Division of Health regarding sanitation in slaughtering houses are compatible with the laws of Missouri; the Division of Health is authorized to promulgate such regulations, and such regulations are legal.

November 3, 1960

H. M. Hardwicke, M. D.  
Acting Director  
Division of Health  
State Office Building  
Jefferson City, Missouri

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Dear Dr. Hardwicke:

Your request of April 25, 1960, for an official opinion reads:

"Enclosed are drafts of two publications proposed for reproduction and distribution by the Division of Health. The publications are: 'Regulations and Code Governing Sanitation in Slaughtering Plants,' and 'Regulations Governing the Production and Handling of Fluid Milk and Fluid Milk Products.'

These will be filed with the Secretary of State as Division of Health Regulations.

Your review of the drafts is requested and your comments solicited in regard to the legality of the documents and the authority of the Division of Health to promulgate regulations in each specific field."

Subsequent to writing the above letter you requested us to delay an answer pending discussion between your Department and the Department of Agriculture. Recently you have informed us that you do not desire our opinion regarding the regulations governing the production and handling of fluid milk and fluid milk products but that you do want our opinion with respect to the proposed regulation governing sanitation in slaughtering plants.

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We will first consider the matter of the authority of this Division to make such regulations. Section 196.045, numbered paragraph 1 which reads:

"1. The authority to promulgate regulations for the efficient enforcement of sections 196.010 to 196.120 is hereby vested in the division of health. The division shall make the regulations promulgated under said sections conform, insofar as practicable, with those promulgated under the federal act."

From the above it will be noted that the Division of Health is given authority to promulgate regulations with respect to section 196.070, Numbered paragraph 1, 2, 3 and 4 which reads:

"A food shall be deemed to be adulterated:

"(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this subdivision if the quantity of such substance in such food does not ordinarily render it injurious to health; or

(2) If it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of section 196.085; or

(3) If it consists, in whole or in part, of any diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or

(4) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered diseased, unwholesome, or injurious to health; or"

Certainly the preparation of meat in a slaughtering plant for human consumption would bring it within the province of section 196.070, supra. It would appear therefore that the Division of Health would have authority to promulgate regulations with respect to sanitation in slaughtering plants. The question before us therefore is whether the regulations submitted by you to us are such as can legally be made by you. To determine this matter we must look first to the law governing the regulation making power of administrative bodies such as the Division of Health.

We first direct attention to Section 94, page 413 et seq, C. J. S. Vol. 73 which reads:

"Inasmuch as the rule-making power of a public administrative body is a delegated legislative power, which it may not use either to abridge the authority given it by the legislature or to enlarge its powers beyond the scope intended by the legislature, statutory provisions control with respect to what rules and regulations may be promulgated by such a body, as well as with respect to what fields are subject to regulation by it. While a public administrative body may have the authority to make or adopt rules and regulations designed to carry out the duties imposed on it and to effectuate the purpose of the enactment under which it operates or which it is administering the rule-making power of such a body must exist within the framework of the statute creating it, and it must accord therewith, and with the policy indicated therein.

A public administrative body may make only such rules and regulations as are within the limits of the powers granted to it and within the boundaries established by the standards, limitations, and policies of the statute giving it such power, and it may go no further than to make administrative rules and regulations which fill in the interstices of the dominant enactment. It may make only rules and regulations which effectuate a law already enacted, and it may not make rules and regulations which are inconsistent with the provisions of a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute, and it may not, by its rules and regulations, amend, alter, enlarge, or limit the terms of a legislative enactment."

We would next direct attention to the case of *ex parte Williams* 139 S.W. 2d 485. In that case the Missouri Supreme Court stated (1.c. 491 [12]):

"A legislative body cannot delegate its authority but alone must exercise its legislative functions. 12 C. J. 839; 6 R.C.L. 175. It may empower certain officers, boards, and commissions to carry out in detail the legislative purposes and promulgate rules by which to put in force legislative regulations. It may provide a regulation in general terms and may define certain areas within which certain regulations may be imposed, and it may empower a board or a council to ascertain the facts as to whether an individual or property affected come within the general regulation or within the designated area.' *Cavanaugh v. Gerk*, 313 Mo. 375, 280 S. W. 51, loc. cit 52."

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Also to the case of McCreery V. Ijams, 59 N. E. 2d 133, a case decided by the Appellate Court of Indiana. In that case the court stated (1.c. 136 [3-5]):

"The State Board of Tax Commissioners does have statutory authority to make rules and regulations to carry out the purposes for which it is constituted, Burns' 1943 § 64-1309 and § 64-1309 and § 64-2826, but it has no authority to enact law or add to or detract from the law as enacted, nor may it by rule extend its powers beyond those conferred upon it by law."

Also to the case of California employment Commission v. Bowden 126 P. 2d 972. In that case the Superior Court of Santiago California stated (1.c. 979 [5-7]):

"In the absence of constitutional provision therefor it is now settled that administrative bodies in this State having state-wide functions are devoid of judicial powers. The Commission's rules are valid in so far as they are in line with the terms of the Act and no farther. They are impotent to change the clear meaning of such terms."

Also to the case of State vs. Public Service Commission 225 S.W. 2d, In that case the Kansas City Court of Appeals stated (1.c. 794 [1]):

"[1] However, the adoption of such a rule by respondent can only be legally authorized upon the grounds that the Legislature has directly, or by necessary or reasonable implication, authorized the same. Respondent has no power except that granted by its creator. Missouri Valley Realty Company v. Cupples Station Light, Heat & Power Company, Mo. Sup., 199 S. W. 151, loc. cit. 153; Ex parte Williams, 345 Mo. 1121, 139 S.W. 2d 485, loc. cit. 491."

From all of the above it would appear that an administrative body may not enact regulations which alter, enlarge, or limit the terms of a statute.

We must now consider the law regarding sanitation in slaughtering houses in the light of the regulations submitted to you to determine whether such regulations do in any particular alter, enlarge, or limit the existing law regarding sanitation in slaughtering houses. This law is found in Section 196.190 RSMo 1949 through 196.265 and applies equally to numerous other food

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handling establishments.

We have carefully examined each item of the regulations submitted by you and have checked such items against the above provisions of the statutory law relating to slaughtering houses and do not in any instance find that the aforesaid regulations alter, amend, enlarge or make less the aforesaid statutory law, but that on the contrary the aforesaid regulations simply make more definite and applicable the provisions of the aforesaid law and serve to implement it.

CONCLUSION

It is the opinion of this department that the regulations submitted by the Division of Health of Missouri regarding sanitation in slaughtering houses are compatible with the laws of Missouri, that the Division of Health is authorized to promulgate such regulations and that such regulations are legal.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON  
Attorney General

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