

MILK PRODUCTS: The phrase "not requiring refrigeration" as  
HEALTH PURPOSES: used in Section 196.932, RSMo. Cum. Supp.  
1963, refers to milk products not requiring  
refrigeration for public health or sanitation  
purposes.

OPINION NO. 64

April 5, 1965



Dr. H. M. Hardwicke, M.D.  
Acting Director  
Division of Health  
Jefferson City, Missouri

Dear Dr. Hardwicke:

Your request for an official opinion dated January 13, 1965, reads as follows:

"It is respectfully requested an opinion be rendered in regard to the following. Chapter 196, Section 196.932 reads as follows:

"The provisions of Sections 196.930 to 196.962 do not apply to manufactured dairy products, including, but not limited to butter, condensed milk, evaporated milk, sterilized milk or milk products not requiring refrigeration, all types of cheese, or to nonfat dry milk, dry whole milk or part fat dry milk unless used in the preparation of fluid milk or fluid milk products."

"A heavy cream is entering Missouri from out-of-state sources which, according to the manufacturer's label, requires refrigeration. The manufacturer states that refrigeration is required to maintain stability of the product and to prevent butterfat separation from other constituents of the product. The manufacturer maintains that refrigeration is not required to prevent bacterial decomposition since the product is sterilized and is aseptically packaged after sterilization.

"Does the fact that this product requires refrigeration to maintain product stability place it in the graded fluid milk category as defined in Chapter 196, Sections 196.930 to 196.962?"

Dr. H. M. Hardwicke, M.D.

Section 196.932, quoted above, is applicable to the question which you have submitted. We have found no court case interpreting it. The determination of whether the product actually requires refrigeration for health or sanitary purposes must be made by the Division of Health since this is a matter of fact. Reliance cannot be placed wholly upon the manufacturer's representation or upon the statements appearing on the label on the product. It is the duty of the Division to determine this matter of fact by its own investigation. However, we are of the opinion that the phrase "not requiring refrigeration" as used therein, refers to milk products not requiring refrigeration for public health or sanitation purposes. It does not refer to requirements imposed by the manufacturer, himself, for marketing purposes not related to health and sanitation.

Our reason for reaching this conclusion is based on the established rules of statutory construction holding that statutes should be given their plain obvious meaning and this meaning may be ascertained by inquiring as to the basic purposes of the statute involved. The applicable doctrine is stated in Sutherland Statutory Construction, Volume 3, Section 5505, as follows:

" . . . cases within the reason, though not within the letter of a statute shall be embraced by its provisions; and cases not within the reason, though within the letter shall not be taken to be within the statute."

Milk control statutes, where otherwise valid, have been uniformly upheld by the courts in order to accomplish sanitary and public health objectives. In Sutherland Statutory Construction, Volume 3, Section 7202, we find the following statement of this well-settled doctrine:

"Milk control legislation providing for the licensing of milk dealers, and the regulation of prices has also received wide adoption. This legislation, enacted for the purpose of maintaining an adequate and wholesome supply of milk fit for human consumption receives a liberal interpretation. The same treatment should be accorded laws providing for the inspection of cattle to determine the presence of contagious disease."

Dr. H. M. Hardwicke, M.D.

If you have determined that the product does not require refrigeration for health purposes, then this statute is not applicable.

CONCLUSION

Therefore, it is the opinion of this office that Sections 196.930 to 196.962, RSMo. Cum. Supp. 1963, do not apply to sterilized milk or a milk product which does not require refrigeration in order to maintain it in a healthful and sanitary condition.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Clyde Burch.

Yours very truly,

  
NORMAN H. ANDERSON  
Attorney General