



AGRICULTURE DEPARTMENT: The specific provisions of SB No. 77, 74th  
HEALTH-BOARD OF: General Assembly, as to sanitation in slaugh-  
STATUTORY CONSTRUCTION: terhouses must be regarded as an exception to,  
MEAT INSPECTION: or qualification of, the general provision of  
SLAUGHTERHOUSES: Chapter 196, RSMo 1959, and that by the enact-  
ment of SB 77 the legislature intended to  
place in the Department of Agriculture exclusive jurisdiction to pres-  
cribe rules and regulations with respect to sanitary practices in all  
commercial plants at which livestock or poultry are slaughtered, or at  
which meat or meat products are processed for human consumption, and  
did not intend to subject those who are so regulated to duplicate super-  
vision by the Division of Health.

February 13, 1968

OPINION NO. 67 (1968)  
356 (1967)

L. M. Garner, M. D.  
Acting Director  
Division of Health  
Broadway State Office Building  
Jefferson City, Missouri 65101

Dear Dr. Garner:

This is in answer to your request for an opinion as follows:

"The Seventy-Fourth General Assembly passed  
Senate Bill No. 77 relating to livestock and  
poultry inspection.\* \* \*

We respectfully request your opinion as to  
what responsibility the Missouri Division of  
Health has under Section 192.020, and Chapter 196,  
particularly Sections 196.070, 196.075, and  
196.190."

Section 192.020, RSMo 1959, to which you refer is as follows:

L. M. Garner, M. D.

"To safeguard the health of the people of Missouri--It shall be the general duty and responsibility of the division of health to safeguard the health of the people in the state and all its subdivisions. It shall make a study of the causes and prevention of diseases. It shall designate those diseases which are infectious, contagious, communicable or dangerous in their nature and shall make and enforce adequate orders, findings, rules and regulations to prevent the spread of such diseases and to determine the prevalence of such diseases within the state. It shall have power and authority, with approval of the director of public health and welfare, to make such orders, findings, rules and regulations as will prevent the entrance of infectious, contagious and communicable diseases into the state."

No comparable or corresponding provision is contained in SB NO. 77 and therefore SB No. 77 made no change in responsibility of the Division of Health under Section 192.020. However, a different situation is presented with respect to Chapter 196, relating to the inspection, manufacture and sale of food. Paragraph 1 of Section 196.045, RSMo 1949, provides:

"Authority for enforcement vested in division of health --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 which provides in part as follows:

"Food, when deemed adulterated. -- 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

L. M. Garner, M. D.

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;"

The preparation of meat as food brings it within the above provisions of Section 196.070 and under the authority of that Section, the Division of Health promulgated regulations with respect to sanitation in slaughterhouses. Such regulations were promulgated in 1960 and were in effect when SB No. 77 was enacted. Sections 2 and 3 of SB No. 77 provide:

"Section 2. All commercial plants at which livestock or poultry are slaughtered, or at which meat or meat products are processed for human consumption, shall be operated in accordance with such sanitary practices as are provided by this act and by the rules and regulations prescribed by the commissioner.

Section 3. 1. There is hereby created 'The Meats Section of the Veterinary Division of the Department of Agriculture'.

2. The commissioner shall appoint a graduate veterinarian as the head of the meat section.

L. M. Garner, M. D.

3. The head of the meats section shall enforce the rules and regulations prescribed by the commissioner, and shall perform such other duties as the commissioner and the state veterinarian deem necessary."

Thus, we have two legislative enactments on the same subject matter. Your question, therefore, presents a problem in statutory construction, inasmuch as it involves a determination whether the power of the Division of Health to make and enforce regulations relative to sanitation in slaughterhouses has been abrogated or limited by SB No. 77 which places such authority in the Commissioner of Agriculture.

The fundamental purpose in statutory construction is to ascertain and give effect to legislative intent. Therefore, the construction of SB No. 77 must be such as to effectuate the purpose of its enactment and the legislative intent. The question which concerns us here is whether the legislature, when it enacted SB No. 77, dealing comprehensively and specifically with sanitation in all commercial plants at which livestock or poultry are slaughtered or at which meat or meat products are processed for human consumption, intended to limit or supersede the regulatory power of the Division of Health as to that particular matter, or to leave it unimpaired and to lodge concurrent power, in many particulars, in a second agency, the Meats Section of the Veterinary Division of the Department of Agriculture. In Wright vs. J. A. Tobin Construction Company, 365 S.W. 2d 743, 1. c. 744, the Court said:

"[3,4] In ascertaining the legislative intent as expressed in a statute courts are aided by certain well established rules. One such rule is that in the construction of statutes it is presumed that the legislature is aware of the interpretation of existing statutes placed thereon by the states' appellate courts, and that in amending a statute or enacting a new one on the same subject it is ordinarily the intent of the legislature to effect some change in the existing law. If this were not so the legislature in amending a statute would be accomplishing nothing, and legislatures are not presumed to have intended a needless and useless act. See, State ex rel. M. J. Gorzik Corp. v. Mosman, Mo. Sup., 315 S.W. 2d 209."

L. M. Garner, M. D.

It must be presumed that the legislature was aware of the regulations promulgated by the Division of Health relative to sanitation in slaughterhouses, and by the enactment of SB No. 77 intended to effect some change with respect to the authority of the Division of Health to promulgate and enforce these regulations. In Gross vs. Merchants-Produce Bank, 390 S.W. 2d, 591, l.c. 598, the Court said:

"[9,10] It is the established rule of construction that the law does not favor repeal by implication and where there are two or more provisions relating to the same subject matter they must, if reasonably possible, be construed so as to maintain the integrity of both. State ex rel. Newton McDowell, Inc., v. Smith, 334 Mo. 653, 67 S.W. 2d 50. As stated in State ex rel. and to Use of George B. Peck Co. v. Brown, 340 Mo. 1119, 105 S.W. 2d 909, 911, 'Repeals by implication are not favored -- in order for a later statute to operate as a repeal by implication of an earlier one, there must be such manifest and total repugnance that the two cannot stand \* \* \*.' It is also a rule of construction that where two statutes treat of the same subject matter, one being special (59.163) and the other general (443.460), unless they are irreconcilably inconsistent, the latter, although later in date, will not be held to have repealed the former, but the special act will prevail in its application to the subject matter as far as it comes within the special provisions. State ex rel. Newton McDowell, Inc. v. Smith, supra; State ex rel. Preisler v. Toberman, 364 Mo. 904, 269 S.W. 2d 753. \* \* \*"

82 C.J.S. 369, Statutes, states as follows:

"General and special statutes should be read together and harmonized, if possible; but, to the extent of any necessary repugnancy between them, the special statute will prevail over the general unless it appears that the legislature intended to make the general act controlling."

L. M. Garner, M. D.

Chapter 196 is general in its terms applying to every building "\* \* \*used as a bakery, confectionery, cannery, packinghouse, slaughterhouse, restaurant, hotel, dining car, grocery, meat market, dairy, creamery, butter factory, cheese factory, or other place or apartment used for the preparation for sale, manufacture, packing, storage, sale or distribution of any food, \* \* \*" Section 196.190. Standing alone this language is broad enough to include sanitation in slaughterhouses. Yet it is clear that by SB No.77 the legislature, as to sanitation in slaughterhouses, has specifically decreed that:

"All commercial plants at which livestock or poultry are slaughtered or at which meat or meat products are processed for human consumption shall be operated in accordance with such sanitary practices as are provided by this act and by the rules and regulations prescribed by the Commissioner."

This specific enactment manifests a legislative intent to except the particular function relative to sanitation in plants at which livestock and poultry are slaughtered from operation of the general provisions of Chapter 196. Otherwise, we would have an anomalous situation for the two acts cannot be reconciled. It is apparent in this case that a concurrent jurisdiction with respect to identical matters would present a situation of almost inescapable confusion and conflict for it would seem that one agency could prescribe hot water for sanitizing purposes, while the other agency with equal authority could prescribe cold water for the same purpose.

We have therefore, Chapter 196, a regulatory statute, general in character and broadly applicable to many subjects within a general class, namely food, and SB No. 77, also a regulatory statute, but special in character and applicable only to and dealing minutely with some of the particular subjects within the same general class, namely meat and meat products. No legislative intent is apparent to impose a duplicate and conflicting control upon those subject to regulations under this special act. In such circumstances the jurisdiction conferred by the special act must be exclusive as to matters covered by it, and as stated in *Gross vs. Merchants-Produce Bank*, supra:

L. M. Garner, M. D.

"The special act will prevail in its application to the subject matter as far as it comes within the special provision."

The subject matter of SB No. 77 is:

"All commercial plants at which livestock or poultry are slaughtered, or at which meat or meat products are processed for human consumption \* \* \*"

SB No. 77 is specific in its application to the subject matter for it provides that these commercial plants "shall be operated in accordance with such sanitary practices as are provided by this act and by the rules and regulations prescribed by the commissioner." Sanitary practices prescribed by SB No. 77 include authority for the condemnation of "All meat found to be unwholesome or adulterated \* \* \*" (Section 8) And the use of labels approved by the commissioner (Section 10).

Both Chapter 196 and SB No.77 contain provisions that show that the legislative intent is to take cognizance of federal acts. Section 196.050 is as follows:

"Not to prescribe more stringent regulations than prescribed by federal act. -- In no event shall the said division of health prescribe or promulgate any regulation fixing or establishing any definitions or standards which are more rigid or more stringent than those prescribed by the federal act applying to any commodity covered by sections 196.010 to 196.120 and if any product or commodity covered by said sections shall comply with the definitions and standards prescribed by the federal act for such product or commodity, such product or commodity shall be deemed in all respects to comply with sections 196.010 to 196.120."

Section 14 of SB No. 77 provides:

"Any commercial plant at which livestock or poultry are slaughtered or meat or meat products are processed for human consumption shall be exempted by the commissioner from the inspection provisions of this act if he finds that it has federal inspection or other approved inspection."

L. M. Garner, M. D.

It is apparent from these provisions that the legislature has manifested a continuing intent to cooperate with the federal government to protect the consuming public from meat and meat food products that are adulterated or misbranded. The Wholesome Meat Act approved December 15, 1967, PL 90-201, 81 Stat. 854, 1.c. 895, provides in part:

"Sec. 301. (a) It is the policy of the Congress to protect the consuming public from meat and meat food products that are adulterated or misbranded and to assist in efforts by State and other Government agencies to accomplish this objective. In furtherance of this policy--

(1) The Secretary is authorized, whenever he determines that it would effectuate the purposes of this Act, to cooperate with the appropriate State agency in developing and administering a State meat inspection program in any State which has enacted a State meat inspection law that imposes mandatory ante mortem and post mortem inspection, reinspection and sanitation requirements that are at least equal to those under title I of this Act, with respect to all or certain classes of persons engaged in the State in slaughtering cattle, sheep, swine, goats, or equines, or preparing the carcasses, parts thereof, meat or meat food products, of any such animals for use as human food solely for distribution within such State.

(2) The Secretary is further authorized, whenever he determines that it would effectuate the purposes of this Act, to cooperate with appropriate State agencies in developing and administering State programs under State laws containing authorities at least equal to those provided in title II of this Act; and to cooperate with other agencies of the United States in carrying out any provisions of this Act.

(3) Cooperation with State agencies under this section may include furnishing to the appropriate State agency (i) advisory assistance in planning and otherwise developing an adequate State program under the State law; and (ii) technical and laboratory assistance and training

L. M. Garner, M. D.

(including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program. The amount to be contributed to any State by the Secretary under this section from Federal funds for any year shall not exceed 50 per centum of the estimated total cost of the cooperative program; and the Federal funds shall be allocated among the States desiring to cooperate on an equitable basis. Such cooperation and payment shall be contingent at all times upon the administration of the State program in a manner which the Secretary, in consultation with the appropriate advisory committee appointed under paragraph (4), deems adequate to effectuate the purposes of this section.

(4) \* \* \* \* \*  
(b) The appropriate State agency with which the Secretary may cooperate under this Act shall be a single agency in the State which is primarily responsible for the coordination of the State programs having objectives similar to those under this Act."

The Department of Agriculture is the state agency primarily responsible for the administration of the State Meat Inspection Law.

SB No. 77 contains provisions with respect to adulteration (Sec. 1, Para. 1) Labeling (Sec. 10) and sanitation in slaughterhouses at which livestock and poultry are slaughtered or at which meat or meat products are processed for human consumption, (Sec. 2). Certain provisions of Chapter 196 relating to food and drugs generally contain somewhat comparable or corresponding provisions with respect to adulteration (196.070), misbranding (196.075) and sanitation in slaughterhouses (196.190). However, in view of the specific provisions of SB 77 and in accordance with the rule announced in Gross vs. Merchants-Produce Bank:

"The special act will prevail in its application to the subject matter as far as it comes within those special provisions."

It follows, therefore, that the special act withdrew from the Division of Health the power to promulgate and enforce sanitary

L. M. Garner, M. D.

regulations regarding all commercial plants at which livestock or poultry are slaughtered or at which meat or meat products are processed for human consumption, and it increased the power of the Department of Agriculture to the same extent.

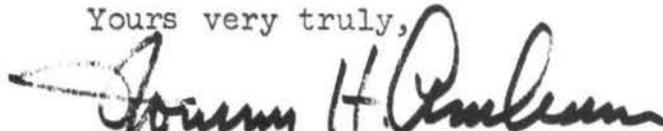
Otherwise, the two agencies and their respective functions remain the same. That is to say, the legislative intent in enacting SB No. 77 was to fit the particular subject matter and specific means provided by that act into the system of law designed to safeguard the health of the people of Missouri. The Division of Health is a component part of that system. Accordingly, any products prepared in slaughterhouses which are not classified as meat or meat products remain within the jurisdiction of the Division of Health for inspection purposes.

#### CONCLUSION

It is the opinion of this office that the specific provisions of SB No. 77 as to sanitation in slaughterhouses must be regarded as an exception to, or qualification of, the general provisions of Chapter 196, RSMo 1959, and that by the enactment of SB No. 77 the legislature intended to place in the Department of Agriculture exclusive jurisdiction to prescribe rules and regulations with respect to sanitary practices in all commercial plants at which livestock or poultry are slaughtered, or at which meat or meat products are processed for human consumption, and did not intend to subject those who are so regulated to duplicate supervision by the Division of Health.

The foregoing opinion, which I hereby approve, was prepared by my assistant L. J. Gardner.

Yours very truly,



NORMAN H. ANDERSON  
Attorney General