AGRICULTURE:
OLEOMARGARINE:
STATUTORY CONSTRUCTION:

Oleomargarine made and manufactured from the ingredients, commodities or combinations thereof, named and set forth in Section 561.770, RSMo 1959, may be sold or offered for sale only when the containers or cartons thereof have printed thereon the word "oleomargarine".

OPINION NO. 169

March 26, 1968

FILED
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Honorable Nelson B. Tinnin
State Senator- 23rd District
Hornersville, Missouri

Dear Senator Tinnin:

This is in reply to your recent letter requesting an opinion of this office and reading in part as follows:

> "This is to request an opinion as to whether the state margarine law permits the use of the term 'margarine' for the product. It is historically, commonly, and also federally used as being synonymous with 'oleomargarine', a word used by the legislature in writing the law years ago. * * *"

The provisions of the law to be considered with respect to your request are paragraphs one and three of Section 561.770, RSMo 1959, which read as follows:

> "1. That for the purposes of this section certain manufactured substances, certain extracts and certain mixtures and compounds, including such mixtures and compounds with butter, shall be known and designated as 'oleomargarine', namely: All substances heretofore known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef fat, suet, lard, lard oil,

> vegetable oil, annatto, and other coloring matter, intestinal fat, and offal fat--if made in imitation or semblance of butter or calculated or intended to be sold as butter or for butter or churned, emulsified or mixed in cream, milk,water, or other liquid and containing moisture in excess of one per cent.
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> * * * * * * * *
>
> 3. Oleomargarine made and manufactured from the ingredients, commodities or combinations thereof herein named and set forth shall be sold or offered for sale only when the containers or cartons thereof have printed thereon the word 'oleomargarine'."

Your question is whether the substance defined as oleomargarine in paragraph 1 of Section 561.770 may be sold in containers or cartons having the word "margarine" imprinted thereon instead of the word "oleomargarine".

As indicated in your letter, many states and the Federal Government consider that the term margarine is synonymous with oleomargarine. In a Notice of Proposed Rule Making in the matter of amending the definition and standard of identity for oleomargarine published in the Federal Register October 13, 1951 [21 CFR Part 45], the Acting Administrator of the Food and Drug Administration made the following findings of fact:

> "1. Since the definition and standard of identity for oleomargarine (21 CFR 45.0) was adopted in 1941, sections of the Internal Revenue Code dealing with oleomargarine have been repealed. The Food, Drug, and Cosmetic Act of 1938 has been amended to include special provisions with respect to colored oleomargarine (64 Stat. 20). In this legislation 'margarine' was made a synonym for 'oleomargarine' in provisions prescribing labels for oleomargarine. Prior to this time the term 'margarine' had been used extensively in the United States as a synonym for oleomargarine, but the Oleomargarine Act of August 2, 1886, as amended, provided that foods made in semblance of butter should be designated as oleomargarine. (R. 18-25, 31-35)"

The Legislature of Missouri has not been unmindful of the term margarine. Section 561.770 was enacted in 1929 and referred only to oleomargarine. However, in 1959 the legislature enacted Section 413.285 which specifically recognizes margarine as follows:

> "That butter, oleomargarine, and margarine shall be offered and exposed for sale and sold by weight and only in units of one-fourth pound, one-half pound, one pound, or multiples of one pound avoirdupois weight."

Thus we have a situation where the legislature having defined the term "oleomargarine" in 1929, thereafter, in 1959, enacted further legislation on the same subject matter without amending the definition.

The fact that the legislature permitted the definition of oleomargarine to stand for many years without changing its phraseology, although enacting another statute on the same subject matter is persuasive evidence that the legislature intended that the scope of the latter enactment would be controlled by the definition. The applicable rule of statutory construction is stated in Morgan v. Jewell Construction Co., 91 S.W. 2d, 638, 641, as follows:

> "[3-5] It is well established that a construction of a statute by the Legislature, as indicated by the language of other or subsequent enactments, is entitled to consideration as an aid to interpreting a statute. 59 C.J. p. 1033; State ex rel. v. Hackmann, 275 Mo. 47, 54, 204 S.W. 513; State ex inf. v. Long-Bell Lumber Co., 321 Mo. 461, 12 S.W. (2d) 64; Evans v. McLalin, 189 Mo. App. 310, 175 S.W. 294; State ex rel v. Wilson, supra; Crohn v. Kansas City Home Telephone Co., 131 Mo. App. 313, 109 S.W. 1068. And where the controversy has arisen since the enactment of the subsequent statute or amendment wherein the Legislature has indicated that the statute should be taken to mean a certain thing, such legislative construction should be given great weight. * * *"

It appears, therefore, that to carry out the legislative intent, the substance which the legislature has defined as "oleomargarine" in Section 561.770 and referred to as "margarine" in Section 413.285, "shall be sold or offered for sale only when the

containers or cartons thereof have printed thereon the word 'oleomargarine'." These words of the statute are unambiguous and unequivocal. In such circumstances, as stated by the Court in Clark vs. Kansas City, St. L. & C.R. Co., 118 S.W. 40, l.c. 44 and 46:

> "(2) Courts have no right, by construction, to substitute their ideas of legislative intent for that unmistakably held by the Legislature and unmistakably expressed in legislative words. 'Expressum facit cessare tacitum'. We must not interpret where there is no need of it. * * *
> * * * * * * * *
> We think learned counsel has mistaken the source of the power to correct evils, if any, in the statute. He should go to the Legislature, and request that body to enlarge the remedy, and make it flexible and broad enough to include cases within the hardships put by him in the case at bar, and see what the lawmaker says; for it seems sensible that the lawmaker should first write the law, and not we. To us the maxim applies: 'Jus dicere et non jus dare.'"

The Supreme Court of the United States considered an unambiguous statute in Iselin vs. United States, 270 U.S. 245, 46 S. Ct. 248 (70 L.Ed. 566). It stated its conclusion as follows:

> "* * *The statute was evidently drawn with care. Its language is plain and unambiguous. [251] What the government asks is not a construction of a statute, but, in effect, an enlargement of it by the court, so that what was omitted, presumably by inadvertence, may be included within its scope. To supply omissions transcends the judicial function. Compare United States v. Weitzel, 246 U.S. 533,543, 62 L.Ed. 872, 874, 38 Sup. Ct. Rep. 381; Peoria & P.U.R. Co. v. United States, 263 U.S. 528, 534, 535, 68 L. ed.427, 430, 431, 44 Sup. Ct. Rep. 194. * * *"

Honorable Nelson B. Tinnin

CONCLUSION

It is the opinion of this office that oleomargarine made and manufactured from the ingredients, commodities or combinations thereof, named and set forth in Section 561.770, RSMo 1959, may be sold or offered for sale only when the containers or cartons thereof have printed thereon the word "oleomargarine".

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

Very truly yours,

NORMAN H. ANDERSON
Attorney General