

May 16, 1972

OPINION LETTER NO. 8  
Answer by letter-Wieler

Mr. Dexter D. Davis  
Commissioner of Agriculture  
Department of Agriculture  
Post Office Box 630  
Jefferson City, Missouri 65101



Dear Mr. Davis:

This is in response to your request for an opinion concerning Sections 196.851 to 196.895, RSMo 1969, known as the "Manufacture and Sale of Ice Cream and Frozen Food Products" law.

The questions raised which require answers are as follows:

1. Can the Commissioner of Agriculture require the manufacturer's name to be prefixed or identified by the words "manufactured by" (a) where the container bears the manufacturer's name but it is not apparent from reading the label itself that the name is that of the manufacturer or whether it is a brand or trademark, (b) where the container bears only a brand or trade name and the manufacturer is registered under Section 417.200, RSMo (or other statute) to do business under that name but that name is still not the actual name of the manufacturer, or (c) where the container bears a brand or trade name and a notation "distributed by" followed by the name of the manufacturer/distributor but without any positive statement that the distributor is the manufacturer.

2. Do the provisions of Section 196.886, RSMo 1969, conflict with federal law, 15 U.S.C.A.,

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Section 1453, dealing with the labeling of food commodities? If so, which law governs?

3. (a) Does Section 196.866, RSMo 1969, prohibit the issuance of two licenses to two corporations manufacturing ice cream at the same facility at the same location? (b) May two licenses be issued to one corporation doing business under two different names (i.e., corporate name and brand name registered pursuant to Section 417.200, RSMo)?

In answer to your first question, we note that Section 196.886(1) and (2), RSMo 1969, provides that:

"No person, firm, association or corporation shall:

(1) Manufacture and sell ice cream, and related frozen food products defined in sections 196.851 to 196.895 in containers unless each container shall bear the name of the manufacturer on the body or lid of such container; or

(2) Sell or offer for sale or have in his or its possession with intent to sell, any product defined in sections 196.851 to 196.895 in or from a container which is falsely labeled or branded as to the manufacturer of such product; . . ."

Reading this statute in conjunction with Section 196,851 which states that the purpose of this law is to "prevent confusion, fraud and deception" in the manufacture and sale of ice cream and frozen food products, we are of the opinion that the Ice Cream and Frozen Food Products law requires manufacturers to positively identify themselves, either through the use of the words "manufactured by" or other appropriate means, in all instances where confusion might reign as a result of brand names or distributor's names appearing on the containers. The whole purpose of this law is to prevent the consumer from being misled through the use of brand names or labels. Under the circumstances enumerated in your opinion request, we are of the opinion that the "Manufacture and Sale of Ice Cream and Frozen Food Products" law requires that the manufacturer's name be positively identified by the words "manufactured by" or other appropriate means.

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Your second question involves the problem of which law controls in a situation where federal and state laws concerning the manufacture or distribution of ice cream are in conflict. Obviously, where the federal government through its power to regulate commerce has enacted laws concerning the manufacture and distribution of food products, such law controls in any situation where it comes into conflict with the state law. However, the situation mentioned in your opinion request does not amount to a conflict in our opinion. Section 196.886 provides that the name of the manufacturer shall appear on the body or lid of each ice cream container. The federal law on this subject, 15 U.S.C.A., Section 1453(a) (1), provides that all food commodities shall bear a label specifying the name and place of business of the manufacturer, packer or distributor. The rule promulgated by the Secretary of Health, Education and Welfare dealing with this subject simply provides that the label shall specify conspicuously the name and place of business of the manufacturer, packer, or distributor. 21 C.F.R., Section 1.8(a). Therefore, we fail to see a conflict.

Your last question in the first part asks whether Section 196.866, RSMo 1969, would prohibit the issuance of two licenses to two corporations which manufacture ice cream using the same facilities at the same location. In our opinion, it does not. Section 196.866 provides that every corporation in the business of manufacturing such products must obtain a license from the Commissioner of Agriculture. It further states that a license must be obtained for each plant or place of business where such products are manufactured or frozen. Nothing in this law forbids the use of one facility by two corporations for the manufacture or freezing of ice cream or related products. The only requirement is that of Section 196.866. That is, each corporation must be licensed and every plant manufacturing or freezing ice cream or related products must be licensed.

The second part of your last question asks whether two licenses may be issued to one corporation doing business under two different names. Section 196.866 provides that every corporation in the business of manufacturing ice cream or related products must obtain a license from the Commissioner of Agriculture. That section also requires that a license must be obtained for each plant or place of business where such products are manufactured or frozen. The fact that a corporation is doing business under two or more names does not make it anything other than a single corporation. This being so, it would not be necessary to issue two licenses to one corporation doing business under two different names unless that corporation owned more than one plant or place of business where

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ice cream or related products were manufactured or frozen. In this event, it would be necessary to license each plant.

Yours very truly,

JOHN C. DANFORTH  
Attorney General