SUNSHINE ACT:
PUBLIC RECORDS:
AGRICULTURE:
MILK SALES ACT:
RULES AND REGULATIONS:

Subsection 2 of Section 4, C.C.S.S.B. No. 1, 77th General Assembly (Sunshine Bill), excludes the information required to be filed by the Commissioner of Agriculture Rules 2.06 and 2.07 from being "public records" open to the public. It is our further opinion that the legislature in subsection 5 of Section 4 of the "Sunshine Bill" intended to exclude the information filed pursuant to Rules 2.06 and 2.07 as "public records" open to the public.

FILED
98

OPINION NO. 98

March 13, 1974

Honorable Paul L. Bradshaw
Senator, District 30
Senate Post Office
Capitol Building
Jefferson City, Missouri 65101

Dear Senator Bradshaw:

This opinion is in response to your request for an official opinion of this office, which request reads as follows:

> "Is information filed with the Commissioner of Agriculture in accordance with rules and regulations promulgated pursuant to the Missouri Unfair Milk Sales Practices Act, Sections 416.410 et seq. RSMo 1969, required to be made available for public inspections by the provisions of Senate Bill No. 1, Seventy-seventh General Assembly, First Regular Session, notwithstanding the provisions of any other law or regulation including Rule 2.09 promulgated by the Commissioner of Agriculture?"

More specifically you state that Rules 2.06 and 2.07 require milk processors and distributors to file with the Commissioner of Agriculture certain information relating to the prices charged for all milk products. Rule 2.09 provides that

all such information filed "will be kept confidential and not made available to the public." However, you state that members of the public have requested to inspect information filed pursuant to Rules 2.06 and 2.07, claiming that such records are now made public by C.C.S.S.B. No. 1, 77th General Assembly, commonly known as the "Sunshine Bill."

There is no question of course that the "Sunshine Bill" applies to the Department of Agriculture. Section 1(1) C.C.S.S.B. No. 1, 77th General Assembly.

However a significant question does exist as to whether information required under Rules 2.06 and 2.07 constitutes "a public record" as defined in subdivision (3) of Section 1 C.C.S.S.B. No. 1. The information filed with the Department of Agriculture is not the record of any proceeding or action by any public body. Rather, it is a record of the business of private industry, and is compiled and filed by private industry. In the absence of the Commissioner's rules, this information would not be subject to disclosure to anyone.

It is not necessary to resolve the fundamental question of what constitutes "a public record" in this opinion for the reason that, even if this information did constitute a public record we believe that it would fall within the exceptions of subsections 2 and 5 of Section 4 of the "Sunshine Bill".

Subsections 2 and 5 of Section 4 provide as follows:

> "2. Any meeting, record or vote pertaining to legal actions, causes of action, or litigation involving a public governmental body, leasing, purchase or sale of real estate where public knowledge of the transaction might adversely affect the legal consideration therefor, may be a closed meeting, closed record, or closed vote.
>
> "5. Other meetings, records or votes as otherwise provided by law may be a closed meeting, closed record, or closed vote."

In order to determine the applicability of these exceptions, a closer examination of the purpose of Rules 2.06 and 2.07 is required.

The Supreme Court of Missouri, En Banc, discussed the purpose of these rules in a case challenging their basic validity, Foremost-McKesson, Inc. v. Davis, 488 S.W.2d 193 (Mo.Banc 1972).

In determining the validity of the rules the Court analyzed the milk law (Missouri Unfair Milk Sales Practices Act, Section 416.410, et seq. RSMo 1969), as well as the rules, as to the need for regulation in the milk industry. The Court recognized that the milk law "is not self-enforcing" and that the Commissioner of Agriculture is authorized to promulgate rules to carry out the purposes of the act. The Court also noted that for the preceding ten years the number of milk processors had declined by at least fifty percent and that almost every state had imposed some type of restriction on the dairy industry in order to insure an adequate supply of milk at a fair price determined by wholesome and fair competition. Thus, the Court noted the need for close scrutiny and supervision of the milk industry. Foremost-McKesson, l.c. 197.

In upholding the reasonableness of Rules 2.06 and 2.07, the Court considered their relationship to the Commissioner's statutory enforcement remedies of injunction and suspension and revocation of licenses. The Court said:

> "The only way a violation could be apparent to the Commissioner is to give him the means necessary to gain cost information. Otherwise the 1963 amendment to Section 416.450 would be meaningless. The remedies available under Section 416.450 are injunctions and under 416.490 suspension or revocation of licenses; These are the only remedies which the Commissioner is trying to enforce." 488 S.W.2d 193, l.c. 198.

Thus, the Court recognized that the purpose for these rules is to aid in the enforcement of the milk law by the statutory remedies of injunction and the suspension or revocation of licenses. This being the case, it is the opinion of this office that information filed pursuant to Rules 2.06 and 2.07 are records "pertaining to legal actions, causes of action or litigation" within the meaning of subsection 2 of Section 4 of the "Sunshine Bill."

In addition, we believe that to construe the "Sunshine Bill" as opening up milk pricing information, filed under the assurance of confidentiality, to inspection by competing processors and distributors of milk, would be such a subversion of the purpose of the milk law that it would bring into effect the exception to the "Sunshine Bill" found in subsection 5 of Section 4.

In Foremost-McKesson, l.c. 202, the Supreme Court of Missouri stated that the milk law is a price-filing law, not a price-fixing law. Yet, if the milk law, and the rules

promulgated thereunder were to serve as a vehicle for the exchange of pricing information between competitors, the milk law would be transformed into precisely the price-fixing law the Supreme Court of this State said that it was not.

It is well settled that exchange among competitors of information about the "most recent prices charged or quoted" constitutes a strong presumption of price fixing condemned by Section 1 of the Sherman Act and Section 416.010 eq seq., RSMo 1969. United States v. Container Corporation of America, 393 U.S. 333. We do not believe that in passing the "Sunshine Bill" the General Assembly intended to establish price fixing in the milk industry by turning the Department of Agriculture into a conduit for the flow of pricing information from one competitor to another.

Rule 2.09 provides:

> "Prices filed with the Commissioner of Agriculture pursuant to Rule 2.06 of these rules, and reports of price change as provided by Rule 2.07 of these rules will be kept confidential and not be made available to the public."

Since the recognized purpose of the milk law and rules is to encourage competition and to discourage restraints in trade, it follows that there is not only a valid reason for Rule 2.09, but also that Rule 2.09 is a necessity. This, we believe, is what the Court implied in Foremost-McKesson as discussed above, and is the reason the Court recognized the confidentiality rule. Foremost-McKesson, l.c. 201.

In construing statutes, it is presumed that the legislature is aware of other laws affected, and decisions concerning such laws. Smith v. Pettis County, 345 Mo. 839, 136 S.W.2d 282; Howlett v. Social Security Commission, 347 Mo. 784, 149 S.W.2d 806; Glaser v. Rothschild, 221 Mo. 180, 120 S.W. 1. New legislation must be construed and applied consistently with construction placed upon the related parts of the general law. Fiske v. Buder, 125 F.2d 841 (C.C.A. Mo.).

Furthermore, as stated in Foremost-McKesson, l.c. 197:

> "Appellants in seeking to overturn administrative rules and regulations bear a heavy burden, as we said in King v. Priest (banc), 357 Mo. 68, 206 S.W.2d 547, 552: 'In view of the broad authority granted respondents by statute, supra, and the admitted adoption of the rule pursuant

> thereto, the rule must be regarded as prima facie reasonable . . . The burden rested upon appellants to plead facts to show the invalidity of the rule . . . Only in a clear case will the courts interfere on the ground of unreasonableness . . .'"

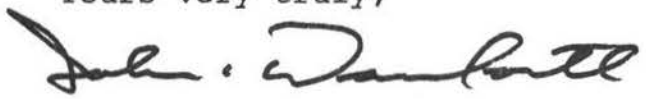
Thus, in interpreting the "Sunshine Bill" the legislature is presumed to have known of Foremost-McKesson and Rule 2.09, and also Section 416.020. The legislature then knew of the purpose of the milk law and rules and their importance as an encouragement of competition and as a control against restraint of trade. The legislature must also have then known of the reason for Rule 2.09 and the implication by the Court in Foremost-McKesson of the need for this rule.

Because Rules 2.06 and 2.07 have been held by the Supreme Court of Missouri to be integrally related to the enforcement of the milk law, and because we believe that the confidentiality assured by Rule 2.09 is necessary to the administration of the milk law, it is our view that subsection 5 of Section 4 of the "Sunshine Bill" is applicable, and that the records in question are closed as provided by law.

CONCLUSION

Therefore it is our opinion that because of the specific nature of the milk law, and the necessity of these regulations to enforce such law through injunctive actions or suspension or revocation of administrative licenses, as expressed by the Court in Foremost-McKesson, Inc. v. Davis, 448 S.W.2d 193 (Mo. Banc 1972), subsection 2 of Section 4, C.C.S.S.B. No. 1, 77th General Assembly (Sunshine Bill), excludes the information required to be filed by Commissioner of Agriculture Rules 2.06 and 2.07 from being "public records" open to the public. It is our further opinion that the legislature in subsection 5 of Section 4 of the "Sunshine Bill" intended to exclude the information filed pursuant to Rules 2.06 and 2.07 as "public records" open to the public.

Yours very truly,



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