



OFFICES OF THE
ATTORNEY GENERAL OF MISSOURI
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ATTORNEY GENERAL

January 31, 1975

OPINION LETTER NO. 1

Herbert R. Domke, M.D.
Director, Division of Health
Department of Social Services
Post Office Box 570
Jefferson City, Missouri 65101

Dear Dr. Domke:

This is in response to your request for our official legal opinion on the following question:

"Do the adulteration and misbranding provisions of the Missouri Food and Drug Law, Sections 196.010--196.120, RSMo. still apply to meat or meat products at the retail store or restaurant level in view of the enactment of the Missouri Meat Inspection Law, Sections 265.300--265.460, RSMo. even though these later sections mentioned are not being administered since delegation of these responsibilities to the USDA?"

The Missouri Meat Inspection Act, §§265.300-265.470, RSMo (L.Mo. 1967, p. 371; A.L.Mo. 1971-1972, p. 299), provides for the regulation of all "commercial plants" by the State Department of Agriculture. A "commercial plant" is defined to include ". . . any establishment . . . in which meat or meat products are prepared for transportation or sale as articles of commerce, . . ." §265.300(4), RSMo. The Director of Agriculture is required to exempt from regulation the operation of any person to the same extent that exemptions are made under the Federal Meat and Poultry Inspection Acts. §265.320, RSMo. The act authorizes the Department of Agriculture to seize or stop the sale of meat or meat products which are "adulterated" or "misbranded." §§265.370 and

Herbert R. Domke, M.D.

265.444, RSMo. Criminal penalties are also provided for persons selling or offering to sell "adulterated" or "misbranded" meat or meat products. §265.460, RSMo. An "adulterated" or "misbranded" meat or meat product is one that exists under the circumstances listed in the Federal Meat Inspection Act, 21 U.S.C. §601. §265.300(1) and (9), RSMo.

The Federal Wholesome Meat Act, 21 U.S.C.A. §§601, et seq., includes elaborate definitions of the terms "adulterated" and "misbranded." 21 U.S.C.A. §601(m) and (n). These definitions were obviously lifted, without substantial modification, from the Federal Food, Drug, and Cosmetic Act of 1938, 21 U.S.C.A. §§301, et seq., specifically §342 ("adulterated") and §343 ("misbranded").

The 1943 amendments to the Missouri Food and Drug Law adopted without substantial deviation these same definitions from the 1938 Federal Act. §§196.010-196.120, RSMo, specifically §196.070 ("adulterated") and §196.075 ("misbranded") (L.Mo. 1907, p. 238, A.L.Mo. 1943, p. 559).

Thus, the effect of the 1971 amendments to the Missouri Meat Inspection Act was to at least reiterate the definitions of "adulterated" and "misbranded" meat and meat products that were found in the earlier enacted Missouri Food and Drug Law. However, to the extent of any inconsistencies in such definitions, we believe those contained in the Meat Inspection Act must prevail under the rule that later laws impliedly repeal earlier inconsistent laws on the same subject. Bullington v. State, 459 S.W.2d 334, 339 (Mo. 1970).

You have indicated to us one such inconsistency. The Division of Health in 1963 adopted and promulgated a regulation relating to the adulteration and misbranding of fresh meat products which defined the composition of hamburger, ground or chopped beef so as to prohibit the addition thereto of any non-beef constituent. This action was apparently taken under the authority of §§196.045 and 196.050, RSMo, an abbreviated version of the "standardized foods" provision of the Federal Food and Drug Act. 21 U.S.C.A. §341. The Federal Wholesome Meat Act contains a similar provision authorizing the Secretary of Agriculture to prescribe definitions and standards of identity or composition for meat and meat food products not inconsistent with any such standards established under the Federal Food and Drug Act. 21 U.S.C.A. §607(c).

The Secretary of Health, Education, and Welfare has not established a standard of identity for hamburger, ground or chopped beef under the Food and Drug Act. However, the Secretary of Agriculture in 1973 promulgated standards of identity for "chopped

Herbert R. Domke, M.D.

beef" or "ground beef," "hamburger," "beef patties," and "fabricated steaks" 9 C.F.R. §319.15. The standard for "beef patties" states that it is chopped, fresh or frozen beef to which may be added "binders or extenders" with or without added water so long as the product's resulting characteristics are essentially that of a meat patty. Thus, a meat or meat food product conforming to this standard with a "label" bearing the name "beef patties" and a listing of optional ingredients other than spices, flavoring, and coloring (21 U.S.C.A. §601(n)(7); 9 C.F.R. §§317.2 and 319.1) would not be misbranded under the Federal Wholesome Meat Act; and by virtue of the incorporation by reference of the Federal Meat Act's misbranding provisions into the Missouri Meat Act, we do not think it would be misbranded under Missouri law provided that its retail "labeling" uses the name "beef patty" and lists the common or usual name of each ingredient except spices, flavoring, and coloring (§196.075(9), RSMo).

The Federal Wholesome Meat Act includes the following provision:

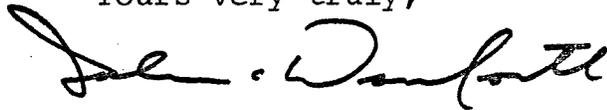
" . . . Marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter may not be imposed by any State . . . with respect to articles prepared at any establishment under inspection in accordance with the requirements of subchapter I of this chapter, but any State . . . may, consistent with the requirements under this chapter, exercise concurrent jurisdiction with the Secretary over articles required to be inspected under said subchapter I, for the purpose of preventing the distribution for human food purposes of any such articles which are adulterated or misbranded and are outside of such an establishment, . . ." 21 U.S.C.A. §678.

We interpret this provision to mean that meat and meat food products coming from plants required to be inspected under the Federal Wholesome Meat Act and thereafter held for sale to the general public by retail food establishments within this state must be determined to be adulterated or misbranded according to the definition of those terms as they are found in the Federal law and regulations and consistent definitions in the Missouri Food and Drug Law and regulations. Armour and Company v. Ball, 468 F.2d 76 (6th Cir. 1973) cert. den. 411 U.S. 981 (1973); Rath Packing Company v. Becker, 357 F.Supp. 529 (D.C. Cal. 1973); Swift & Company, Inc. v. Walkley, 369 F.Supp. 1198 (D.C. N.Y. 1973).

Herbert R. Domke, M.D.

On July 18, 1972, and pursuant to 21 U.S.C.A. §661(c), the Secretary of Agriculture designated Missouri as a state that was not enforcing its own requirements equal to those under the Wholesome Meat Act as to establishments preparing meat for use as human food. 37 Fed. Reg. 138, p. 14222. The effect of this designation is that all meat processing plants in Missouri, whether producing for interstate or intrastate commerce, are subject to federal inspection. Furthermore, by virtue of this designation, any retail establishment (e.g., grocery or restaurant) obtaining meat or meat products for resale to the general public will necessarily receive such commodities from a plant subject to federal inspection. Accordingly, it is our opinion that the Missouri Food and Drug Law still applies to meat and meat products at the retail establishment level so long as the adulteration and misbranding provisions of such law are consistent with the meaning of those terms under the Federal Wholesome Meat Act. As pointed out above, however, a meat or meat food product conforming to the ingredients of a "beef patty" must bear a label, or be accompanied by a menu, containing a list of optional ingredients other than spices, flavoring, and coloring.

Yours very truly,



JOHN C. DANFORTH
Attorney General