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OFFICES OF THE
ATTORNEY GENERAL OF MISSOURI
JEFFERSON CITY

May 27, 1975

OPINION LETTER NO. 114

Mr. James I. Kennedy
Executive Secretary
State Milk Board
909 Missouri Boulevard
Jefferson City, Missouri 65101

Dear Mr. Kennedy:

This is in response to your request for an opinion which request reads as follows:

"Under Section 196.935 Missouri Revised Statutes Cumulative Supplement 1973 Annotations are the producers and bottlers of Grade A retail raw milk exempted from the requirements of the section to have their milk graded, produced, transported, processed, manufactured, distributed, labeled, and sold under state milk inspection and produced in a manner prescribed by regulations authorized by Section 196.939 and under proper permits issued thereunder?"

Section 196.935, RSMo Supp. 1973, provides as follows:

"No person shall sell, offer for sale, expose for sale, transport, or deliver any graded fluid milk or graded fluid milk products in this state unless the milk or milk products are graded and produced, transported, processed, manufactured, distributed, labeled and sold under state milk inspection and the same has also been produced or pasteurized as required by a regulation authorized by section 196.939 and under proper permits issued thereunder. Only pasteurized graded

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fluid milk and fluid milk products as defined in subdivision (3) of section 196.931 shall be sold to the final consumer, or to restaurants, soda fountains, grocery stores, or similar establishments; except an individual may purchase and have delivered to him for his own use raw milk or cream from a farm." (Emphasis added)

Section 196.931(3), RSMo Supp. 1973, defines "graded fluid milk and fluid milk products" as including:

". . . cream, light cream, coffee cream, table cream, whipping cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, whipped coffee cream, whipped table cream, sour cream, cultured sour cream, half-and-half, sour half-and-half, cultured half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, skim milk, skimmed milk, lowfat milk, fortified milk and milk products, vitamin D milk and milk products, homogenized milk, flavored milk or milk products, eggnog, eggnog flavored milk, eggnog flavored lowfat milk, buttermilk, cultured buttermilk, cultured milk, cultured whole milk buttermilk, and acidified milk and milk products, and other fluid milk and fluid milk products so declared by the board which are sold, offered for sale, exposed for sale, delivered or advertised as graded milk and milk products;" (Emphasis added)

In June, 1973, the State Milk Board promulgated regulations for the production and distribution of Grade A retail raw milk and milk products. These regulations provide, inter alia, that every producer-distributor producing and distributing Grade A retail raw milk shall secure a permit from the state authority. The regulations further provide for proper labeling of containers, inspection of production and distributing facilities, and the examination and grading of Grade A retail raw milk and milk products.

It is apparent from the above statutes that all graded fluid milk and fluid milk products are subject to the regulatory provisions of Section 196.935. Graded fluid and fluid milk products

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include, in addition to the specifically named items, any

" . . . other fluid milk and fluid milk products so declared by the board which are sold, offered for sale, exposed for sale, delivered or advertised as graded milk and milk products;"

Pursuant to Section 196.939, RSMo Supp. 1973, the State Milk Board promulgated the aforementioned regulations concerning Grade A retail raw milk.

It is our view that the producers and bottlers of Grade A retail raw milk which is sold, offered for sale, exposed for sale, delivered or advertised as graded milk are not exempted from the requirements of Section 196.935 or the rules promulgated thereunder by the State Milk Board.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth".

JOHN C. DANFORTH
Attorney General