

*Attorney General of Missouri*

JEFFERSON CITY

65102

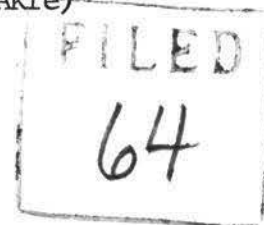
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JOHN ASHCROFT  
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April 3, 1981

OPINION LETTER NO. 64  
(Answer by Letter - Akre)

Mr. W. David Blackwell  
Director, Division of Corrections  
P. O. Box 236  
Jefferson City, Missouri 65102



Dear Mr. Blackwell:

This letter is in response to your inquiry asking whether Sections 216.191 and 216.505, RSMo Supp. 1980, allow the Division of Corrections to sell on the open market soybeans and superior quality cattle produced by the prison farm system. We understand that if soybeans are grown by the prison farms it will be to control "Johnson grass" and to increase soil fertility, not for consumption within the prison system. Similarly, the superior grade of cattle raised by the farms will not be consumed within the prison system.

Initially, sales of correctional institutions farm program products are authorized by Section 216.535, RSMo 1978. Section 216.535, provides:

The Director of the Division of Prison Farms shall plan and institute a long-range and integrated program of farm operations for each of the institutions within the department. This program shall be as diversified as practical so as to employ as many able-bodied inmates as possible and at the same time furnish the institutions with food and provisions for their own use. Products grown or processed in excess of the amounts required by the penal or correctional institutions shall be sold as provided by law for the sale of products manufactured by the Division of Prison Industries. [emphasis added].

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The determinative language is: "Products grown or processed in excess of the amounts required by the penal or correctional institutions shall be sold as provided by law for the sale of products manufactured by the Division of Prison Industries". Resolution of your question is attained by reading Section 216.535 in conjunction with newly enacted Section 216.505.

H.C.S. for S.B. No. 552 80th General Assembly, Second Regular Session, repealed prior Sections 216.191 and 216.505 and enacted in lieu thereof new sections 216.191 and 216.505 with an emergency provision to make the sections effective upon passage. The new sections became effective May 9, 1980. Section 216.505, specifically addresses your inquiry and dictates an affirmative answer thereof. This section provides:

It shall be the policy of the state and of correctional industry programs to serve the state and its political subdivisions use market. Correctional industry programs are hereby authorized to produce goods for other states and their political subdivisions whenever their laws permit them to contract with this state. Before entering into any such contract with other states, an executive agreement shall first be signed between the executive authority of these states. Open market sales may be made in case of excess production and at prevailing market prices for goods of the like quality and kind, if it is considered to be in the best interest of the division.<sup>1</sup>

Observation of the additions and deletions to repealed section 216.505 enable interpretation of the newly enacted section's impact on open market sales of soybeans and high-grade cattle by the Division of Corrections. First, the language regarding the correctional industry programs policy, "to serve only the potential state and political subdivisions use market" is changed by deletion of the restrictive word "only". Secondly,

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Prior section 216.505 reads as follows:

It shall be the policy of the state and the division of prison industries to serve only the potential state and political subdivisions use market, and open market sales shall be discontinued as soon as possible, but in no event shall open market sales be made except in cases of excess production and at prevailing market prices for goods of like quality and kind.

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the legislature expresses its intention for the deletion of the word "only" by adding express authorization for the production of goods for other states and their political subdivisions. Third, and most persuasive in this opinion's conclusion, the express prohibition against open market sales - "[o]pen market sales shall be discontinued as soon as possible, but in no event shall open market sales be made except in case of excess production and prevailing market prices for goods of like quality and kind." - is deleted from the new section. [emphasis added]. Enacted in lieu of this prohibition, with an exception, is language allowing open market sales - "Open market sales may be made in case of excess production and at prevailing market prices for goods of like quality and kind, if it is considered to be in the best interest of the division." [emphasis added].

Obviously, the new statutory provisions have made the prior law's exception the norm. The significant change is that open market sales may be made when there is excess production and the sale would be in the best interest of the division. Previously, open market sales were prohibited except in the case of over production.

With the expansion of correctional industry programs' market for selling goods, the resultant question becomes whether growing soybeans and raising high-grade cattle fall within the ambit of and benefit from newly enacted Section 216.505. It is the understanding of this office that the growing of soybeans is part of a long-range and integrated program of diversified farm operations. The utility of soybean production is not directly derived, but rather, in accordance with good farm management, soybeans are grown in rotation with other crops to assist in the elimination of "Johnson grass" and increase subsequent crop yields of food and provisions for the institution's use grown on the same acreage. Consequently, this postponed benefit from growing soybeans leaves at harvest time the farm program with a product that has no use as the Division of Corrections does not have facilities to process soybeans into soybean meal. It follows, the farm programs' soybean yield is in excess of amounts required by the penal or correctional institutions and can be sold on the open market pursuant to Section 216.505.

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Similarly, the prison farms' beef cattle of superior quality (good, choice, and prime grade beef) to that desired (utility and canner grade beef) by the corrections institution is an excess of a product necessary for the Division of Corrections' use. It is the understanding of this office that the raising of finished cattle is an element of a long-range and integrated program of diversified farm operations. The immediate benefit of the beef cattle operation is to employ able-bodied men and train them in cattle raising and feed lot operation. For food purposes, the institutions currently purchased on the open market lower grade cattle than raised by the prison farms' beef cattle operation at a substantially lower price. Consequently, the product - high-grade cattle - is in excess of amounts required by the penal or correctional institutions. Accordingly, the open market sale of finished cattle is permissible under Section 216.505.

Therefore, this office concludes the Division of Corrections is statutorily permitted to sell on the open market soybeans, which are grown to control "Johnson grass" and increase subsequent crop yields but not immediately converted into a usable product, and high-grade cattle, which are of superior quality to cattle required by the institutions for food.

Very truly yours,



JOHN ASHCROFT  
Attorney General