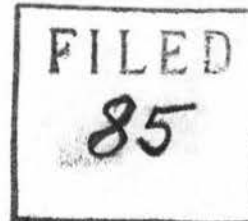


AGRICULTURE: Creamery indemnifying station operator  
for loss sustained by purchase of unlawful  
cream does not violate Missouri Dairy Law.

December 14, 1950

12/28/50

Mr. Joseph T. Stakes  
Director of Dairy Division  
Department of Agriculture  
Jefferson City, Missouri



Dear Sir:

Your letter at hand requesting an opinion of this department, which, in part, reads:

"Cream buying stations and creameries throughout the State condemn illegal cream when offered to them for sale. However, it is known that in some instances the cream is condemned or rejected and the creamery pays the cream station operator for the losses incurred. As further clarification of this point, the cream station operator generally uses his own money in buying the cream from the producer. He then offers this cream for sale to the creamery with whom he has established contractual relationship. Therefore, any cream offered for sale at the creamery level is the property of the cream station operator.

"An opinion is requested as to whether or not it is a violation of the provisions of the Missouri Dairy Law for a creamery to pay the operator for losses incurred by reason of cream offered for sale having been condemned, rejected or destroyed. It is felt that if the cream station operator is reimbursed for such losses, he will be inclined to accept cream of questionable quality from producers and thereby the purpose and intent

Mr. Joseph T. Stakes

of the Missouri Dairy Law will be defeated. It is further pointed out that the creamery by such practices might encourage the cream station operator to purchase illegal cream by guaranteeing him against losses which might be involved. Such a practice also places cream station operators who are not reimbursed for such losses at a competitive disadvantage with regard a local cream station operator who is reimbursed for illegal cream which he purchases and offers for sale to the creamery."

The question which you have submitted is whether or not it is an unlawful practice under the Missouri Dairy Law for a creamery to indemnify or reimburse a cream station operator for losses incurred by him due to cream he has purchased from a producer being condemned, rejected or destroyed. In other words, said cream would be considered "unlawful cream."

Section 14098, Laws of Missouri, 1945, page 83, Subsection 32(e), defines the term "unlawful cream" as follows:

"'Unlawful cream' is cream which contains or has contained dirt, oil, or other foreign or extraneous matter that renders it unfit for human consumption, or that is stale, cheesy, rancid, putrid, or is decomposed. Unlawful cream is hereby declared to be injurious to the public health, and immediately upon its examination and discovery by any licensee hereunder, the title thereto shall immediately vest in the Commissioner for the purpose of effectively removing it from the possible use in human food. Such unlawful cream is hereby declared to be contraband, and may be seized by an agent of the Commissioner, or any A or C licensee hereunder."

The above statute further provides that upon examination and discovery of unlawful cream the title thereto shall immediately vest in the Commissioner of Agriculture.

Section 14113, Laws of Missouri, 1945, page 83, provides as follows:

Mr. Joseph T. Stakes

"It shall be unlawful to buy or sell or offer or expose for sale anywhere in this state any dairy product containing any foreign substance or preservative of any kind whatsoever, not authorized by this law, or to buy or sell or offer for sale or deliver to another, for domestic or palatable use or to be converted into any product for human food, any unclean, impure, adulterated or unwholesome milk or cream."

In reading the above section it appears that the buying or selling, offering or exposing for sale, of unclean, impure, adulterated or unwholesome cream for human food is prohibited.

By the indemnifying arrangement between the cream station operator and the creamery, as you have set out in your letter, it does not appear that any of the condemned cream received by the operator is to be sold, offered for sale or delivered to any other person for domestic use or human food. As we understand the facts, the creamery merely indemnifies the cream station operator for a loss which he has sustained in the purchase of impure or unlawful cream from a producer and there is no actual sale of said cream to the creamery. Such being the case, it is our thought that the indemnifying arrangement existing between the cream station operator and the creamery does not fall within the prohibitions provided for in Section 14113, supra, nor do we find any other statute within the Missouri Dairy Law which would prohibit such practice.

While we can foresee that under such an arrangement as you have described a cream station operator would tend to be less cautious in purchasing cream from a producer, but as long as all of the cream which an operator purchases is properly inspected before it is made available for human consumption, it would seem that the public is protected, which is the principal function of the Missouri Dairy Law.

#### CONCLUSION

It is therefore the opinion of this department that a creamery indemnifying or reimbursing a cream station operator for loss sustained by the operator's purchase of unlawful

Mr. Joseph T. Stakes

cream which is subsequently condemned, rejected or destroyed,  
is not in violation of any provision of the Missouri Dairy  
Law.

Respectfully submitted,

RICHARD F. THOMPSON  
Assistant Attorney General

APPROVED:

  
\_\_\_\_\_  
J. E. TAYLOR  
Attorney General

RFT:ml