AGRICULTURE: MILK PLANTS: LICENSE REQUIRED; WHEN:

Plants receiving milk, testing for butterfat, paying producer on basis of test, filtering, cooling and transporting milk to other plants are "milk plants" within the meaning of Par. 20, Sec. 196.520, RSMo 1949. Filtering and cooling is "processing" within meaning of law. Such plants required to secure one or more types of licenses provided by Paragraph 6, Sec. 196.605, RSMo 1949, to engage in such business.

January 26, 1953

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

Dear Sir:

This is to acknowledge receipt of your recent request for a legal opinion of this department which reads as follows:

> "A request for an official opinion is made as follows:
>
> "Section 196.520, paragraph 20 defines a dairy products manufacturing plant as any commercial creamery, cheese factory, milk plant, milk condensery, dried milk plant, or any other commercial dairy products or processing plant; excepting ice cream manufacturing plants, where milk or cream is delivered by two or more persons for commercial manufacturing or processing for human food purposes.
>
> "Section 196.605, paragraph 3, sets up the license schedule fee which is based upon the annual butterfat purchases during the previous 12-month period.
>
> "There are in operation in this state several plants that receive milk from producers, test the milk for butterfat content, and pay the producer for the

> same. The milk is generally filtered, cooled, and transported to other plants in the state.
>
> "An opinion is requested as to whether such an operation--which receives milk from one or more producers and which plants process the milk by way of cooling it--are eligible to be licensed under the afore mentioned section?"

Paragraph 20, Section 196.525, RSMo 1949, of the Missouri Dairy Law fails to define the term "process" and we are unable to find any decisions interpreting the term as used in connection with the Dairy Law. Webster defines the word process as follows:

> "To subject to some special process of treatment. Specif.: (a) To heat, as fruit, with steam under pressure, so as to cook or sterilize. (b) To subject (esp. raw material) to a process of manufacture, development, preparation for the market, etc.; to convert into marketable form, as livestock by slaughtering, grain by milling, cotton by spinning, milk by pasteurizing, fruits and vegetables by sorting and packing."

In the case of Gordon v. Paducah Ice Mfg. Co., 41 F. Supp. 980, none of those things specifically mentioned in above quoted definitions were done, yet it was held that the icing of refrigerator cars containing fresh strawberries shipped in interstate commerce comes within the meaning of said definition of the word "process."

Above cited case was an action brought by employees to recover overtime wages and damages alleged to be due under the provisions of the Fair Labor Standards Act. The court held that the icing operations by defendant's employees fell within the exemption of Section 7 (c) of the Act, which provides that the Act was not applicable in those instances when an employer was engaged in the "first processing" of perishable or seasonable fresh fruits during a period of not more than fourteen weeks in the aggregate in any one calendar year.

At l. c. 987, the court said:

> "* * *Icing and cooling are but a different degree of freezing and in any event would seem to fall within the general meaning of the term preserving when applied to the icing of strawberries for the purpose of transporting them while in the course of such transportation. It may be true that the defendant's employees at no time actually handled the strawberries, but, as pointed out above, the icing of the cars in question are not to be considered as merely isolated acts on the part of defendant. The evidence clearly showed that they were essential and integral parts of the marketing of the strawberries in distant states. The operations of the defendant accordingly fall within the exemption provided by Section 7(c) of the Act."

While the opinion in this case did not specifically state that the icing operation of the cars of strawberries was a "first process" in so many words, yet the reference to Section 7(c) of the Act providing exemptions, and making the provisions of the Act inapplicable to those engaged in "first processing" of perishable or seasonal fruits during the period mentioned, is such that we believe it was the intention of the court to treat the icing of the strawberries as a "first process," within the meaning of the Act. The icing of the strawberries in no way changed the form or chemical content of the berries as a human food, but was essential to their preservation until they could be marketed in distant states.

Likewise in the instant case, the filtering and cooling of the milk by the receiving milk plants did not in any way change the form or chemical content of the milk, yet, in view of the fact that milk is a perishable food and must be preserved by artifical means while in-transit to other plants for further processing before it can be offered for sale as a human food either in its original liquid, or in other forms, such filtering and cooling operations are as much essential to its preservations as the icing of the strawberries, treated as "first processing," in the quoted portion of above opinion.

It is our thought that the filtering and cooling operation would therefore constitute a "process," within the meaning of the Missouri Dairy Law, and that the plant receiving and "processing" the milk in this manner, would be a "milk plant" within the meaning of Section 196.525, Par. 20, supra.

Paragraph 1, Section 196.605, RSMo 1949, makes it unlawful to operate a milk plant without a license, and reads as follows:

> "1. It shall be unlawful for any person to operate a dairy products manufacturing plant, or a cream station, within this state, unless licensed under the provisions of sections 196.520 to 196.690. Each license issued under said sections must be conspicuously posted in the place of business to which it applies."

Paragraph 6, provides that no one shall operate a milk plant for buying milk or cream on a butterfat basis without securing one or more of the three types of licenses mentioned therein. Said paragraph reads as follows:

> "No person shall operate a cream station or milk plant for the purpose of buying milk or cream on a butterfat basis, or operate a Babcock tester or other equipment for establishing the value of milk or cream or test or grade or sample milk or cream, without having made satisfactory application for and received the proper license, which must be either the 'Form A' license for a 'buyer-tester-grader-sampler,' or the 'Form B' license for a 'buyer,' or the 'Form C' license for a 'tester-grader-sampler,' as provided in this subsection, the annual fee for each such license being two dollars for the license year or unexpired portion thereof, and no person shall be required to have more than one license at any one location under this section."

It is stated that the milk plants mentioned in the opinion request buy the milk, test it, pay the producer (which we assume to be on the basis of the butterfat test) filter the milk, cool, and then transport it to other milk plants.

It is our further thought that all of these operations by the milk plants in question are of the same character as those described in paragraph 6, Section 196.605, supra, and that one or more of the three types of licenses authorizing them to operate a business of the nature mentioned in the opinion request are required.

CONCLUSION

It is therefore the opinion of this department that plants which receive, test for butterfat, and pay the producer of milk on the basis

of the test; filter, cool and transport the milk to other plants for processing, are "milk plants" within the meaning of Paragraph 20, Section 196.525, RSMo 1949, of the Missouri Dairy Law, and that filtering and cooling is "processing" of the milk within the meaning of said law. Such milk plants are required to secure one or more of the linceses provided by Paragraph 6, Section 196.605, RSMo 1949, authorizing them to engage in business of the nature referred to therein.

This opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul N. Chitwood.

Respectfully submitted,

JOHN M. DALTON
Attorney General

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