

AGRICULTURE ) Section 266.270, RSMo 1949, prohibits  
SCREENINGS - DEFINITIONS: ) the mixture of feed with materials ap-  
) pearing in the proposed definition of  
) "Chaff and/or Dust."

1-25-52

January 25, 1952



Mr. A. Earl Straub  
Director, Feed Division  
Department of Agriculture  
Jefferson City, Missouri

Dear Sir:

This is in reply to your request for an opinion of this department. Your request is as follows:

"For the purpose of promoting uniformity in the definitions of commercial feeding-stuffs among the several states, we propose to revise that part of the regulation pertaining to the definition of Screenings of the Missouri State Feed Law.

"The third and last proposed definition is as follows:

"Chaff and/or Dust is material that is separated from grains or seeds in the usual commercial cleaning processes. It may include hulls, joints, straw, mill or elevator dust, sweepings, sand, dirt, grains, seeds. It shall be labeled 'Chaff and/or Dust.' If it contains more than 15% ash the words 'sand' and 'dirt' shall appear on the label.

"The question arises as to the validity of including this definition as a part of our official definitions for Screenings (Section 14329, R. S. Missouri, 1939). May we have an opinion from your office?"

Mr. A. Earl Straub

We note from your request that it is your intention to revise that part of the regulation pertaining to the definition of Screenings of the Missouri State Feed Law. We assume that you are attempting to accomplish this by virtue of the provisions of Section 266.-260, RSMo 1949, which section is as follows:

"The commissioner is hereby empowered to prescribe and enforce such rules and regulations as may be necessary for the enforcement of sections 266.150 to 266.280."

The laws relating to commercial feeding stuffs, under which your query falls, is a division or part of the laws which create and regulate the Missouri State Department of Agriculture. The Department of Agriculture is an administrative agency of the state government created by the legislature of the state for the purpose of carrying out the legislative policy relating to agriculture. Administrative agencies have no power other than that which is expressly granted by the legislature. The Agricultural Department, being an administrative agency created by the Legislature, cannot possess any power to adopt a rule or definition which would result in nullifying the express will of the legislature.

On this subject we refer you to the case of State ex rel. Springfield Warehouse & Transfer Co. et al. v. Public Service Commission, 225 S.W. (2d) 792, 1.c. 794, wherein the Springfield Court of Appeals said:

"However, the adoption of such a rule by respondent (Public Service Commission) can only be legally authorized upon the grounds that the Legislature has directly, or by necessary or reasonable implication, authorized the same. Respondent has no power except that granted by its creator. Missouri Valley Realty Company v. Cupples Station Light, Heat & Power Company, Mo. Sup., 199 S.W. 151, loc. cit. 153; Ex parte Williams, 345 Mo. 1121, 139 S.W. 2d 485, loc. cit. 491.

Mr. A. Earl Straub

"The Legislature has declared the public policy of this state, regarding the transfer of certificates. Respondent is merely the instrumentality of the Legislature, created for the purpose of carrying out that policy. It has no power to adopt a rule, or follow a practice, which results in nullifying the expressed will of the Legislature. It cannot, under the theory of 'construction' of a statute, proceed in a manner contrary to the plain terms of the statute; \* \* \*"

(Parenthetical words and  
Underscoring ours.)

Section 14329, R. S. Mo. 1939, referred to in your request, is now Section 266.270, RSMo 1949, and in part is as follows:

"3. Any person who shall mix or adulterate any feed with rice hulls, chaff, peanut hulls, dirt, ground or crushed corncobs, sawdust, weed seeds, the viability of which has not been destroyed except in poultry feeds or with more than five per cent of mineral substances with the exception that this five per cent limitation shall not apply to mineral feeds, or who shall mix or adulterate any feed with materials of little or no feeding value, or with substances injurious to the health of domestic animals or poultry, or who shall sell, offer or expose for sale or distribution any feed so mixed or adulterated shall be guilty of a violation of sections 266.150 to 266.280."

We are unable to find any authorities covering your request. We are, therefore, forced to resort to a construction of the statute last above quoted. This section prohibits any person from mixing or adulterating any feed with rice hulls, chaff, peanut hulls, dirt, ground or crushed corncobs, sawdust, weed seeds, etc., \* \* \* and also

Mr. A. Earl Straub

prohibits the mixing or adulterating of any feed with materials of little or no feeding value or with substances injurious to the health of domestic animals or poultry, or the sale, offering or exposing for sale or distribution of any feed so mixed or adulterated. Section 266.280, RSMo 1949, provides that any person violating the provisions of said Section 266.270 shall be deemed guilty of a misdemeanor.

Your proposed definition No. 3 of "Chaff and/or Dust", set out in your request, contains a number of materials expressly prohibited by said Section 266.270, among which are the following: chaff, hulls, dust and dirt, and a number of other materials which could have little or no feed value.

It is, therefore, our opinion that the proposed definition No. 3 of "Chaff and/or Dust" be not included in your new definitions of screenings in Missouri.


CONCLUSION

It is, therefore, the conclusion of this department that Section 266.270, RSMo 1949, prohibits the mixture of materials appearing in the proposed definition of "Chaff and/or Dust" and should not be included in your new definitions of screenings for Missouri.

Respectfully submitted,

GROVER C. HUSTON  
Assistant Attorney General

APPROVED:

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

GCH/fh