

HEALTH, BOARD OF:) Board of Health and cities of the first
MUNICIPAL CORPORATIONS:) class both have authority to inspect
food and drugs.

October 30, 1941

11-5



Dr. James Stewart
State Board of Health
Jefferson City, Missouri

Attention: Mr. W. D. Gruce

Dear Sir:

This Department is in receipt of your request for an official opinion, which reads as follows:

"The question has been raised with this office from time to time pertaining to our authority in enforcing the food and drug laws of this State in the cities of the first class, the question being whether this department has authority to act or whether we must leave the enforcement of the health and pure food and drug laws up to the city health departments. I should like your opinion in regard to this matter."

Chapter 58 of the Revised Statutes of Missouri, 1939, provides for the inspection of food and drugs by the State Board of Health. Section 6293, R. S. Mo. 1939, sets forth the powers of a city of the first class and includes the right to regulate the inspection of various foods. The question presented is whether the State Board of Health has the authority to enforce the state food and drug laws in cities of the first class.

We believe this question is answered in the case of City of St. Louis v. Klausmeier, 112 S. W. 516, 213 Mo. 119,

in which our Supreme Court had before it the question of whether the City of St. Louis had the right to enact an ordinance controlling the sale of milk in that city. At that time there was a statute dealing with this subject. The court, through Judge Woodson, said (l. c. 125, 127, 128):

"It is not disputed, but it is conceded by plaintiff, that the acts of 1905 and 1907 are general laws of the State, and that they by their terms apply to the entire State and to all the cities thereof. And it is well settled that the ordinances of the city of St. Louis in order to be of any validity must be consistent with the general laws of the State, and must be in harmony with the 'legislative policy of the State manifested by its general enactments,' and as provided for in express terms by the Constitution. This proposition is fully supported by the following authorities: Dillon on Mun. Corps. (4 Ed.), sec. 329; St. Louis v. Meyer, 185 Mo. 593-4; State ex rel. v. Railroad, 117 Mo. 1, 13; State v. Kessels, 120 Mo. App. 239; Ewing v. Hoblitzelle; 85 Mo. 64, 78.

"But there is nothing in the Constitution or laws of the State which prohibits the city council from enacting ordinances supplemental of and in addition to the State laws in the establishment of standards of purity and providing for the inspection of dairy products. In fact, section 26 of article 3 of the charter of the city of St. Louis expressly authorizes the enactment of just such an ordinance as the one here in question, and the validity of this particular ordinance has been repeatedly sustained and upheld by this court. (St. Louis v. Liessing, 190 Mo. 464; St. Louis v. Grafeman Dairy Co., 190 Mo. 492; St. Louis v. Bippen, 201 Mo. 528."

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"And it is equally well established that where a city has concurrent powers with the State it may prescribe a penalty for the violation of its ordinances different from that prescribed by the State for the violation of a statute regarding the same subject-matter: (Hill v. St. Louis, 159 Mo. 1. c. 167, and cases cited.)

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"The city might wisely rely upon the State law for protection against such illegal sales unless the products so sold fell below a certain standard of purity fixed by ordinance, and at the same time prescribe a penalty for selling such products which fall below the standard fixed by ordinance."

Under the authority of the above decision it will be seen that the State Board of Health and cities of the first class both have authority to regulate the inspection of food and drugs.

Conclusion

It is, therefore, the opinion of this Department that the State Board of Health has authority under Chapter 58, R. S. Mo. 1939, to regulate and inspect food and drugs in this State and that a city of the first class may pass ordinances dealing with the same subject, but that said ordinances must be supplemental to and not in conflict with the state law.

Respectfully submitted,

AO'K:EG

APPROVED:

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