

PENAL INSTITUTIONS: Agricultural products produced by convict labor can be shipped to another state for use by that state.

October 6, 1944

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Department of Penal Institutions
Jefferson City, Missouri

Attention: Mr. K. Autenrieth

Gentlemen:

We have your letter of the 3d in which you submit the following request for an opinion:

"Will you please advise me whether or not the Department of Penal Institutions, State of Missouri, is lawfully permitted to ship a carload of Green Beans to the Department of Public Welfare, State of Ohio?

"Also, if such shipment is permitted, is it necessary to mark each carton or container? There will be approximately 1600 cartons.

"We refer you to the Ashurst-Summers Act of 1940 (54 Stat. 1134), as amended, July 9, 1941, (55 Stat. 581), which became effective as of October 14, 1941. Also the Ashurst-Summers Act of 1935 (49 Stat. 494)."

In conversation with you over the telephone we were further advised that the beans proposed to be shipped are canned green beans.

The so-called Ashurst-Summers Act, referred to in your letter, now appears in 18 U.S.C.A. Section 396a, found at page 135 of said volume, reads as follows:

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"Whoever shall knowingly transport or knowingly cause to be transported in interstate commerce, in any manner or by any means whatsoever, or aid or assist, knowingly, in obtaining transportation for or in transporting any goods, wares, and merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners (except convicts or prisoners on parole or probation) or in any penal or reformatory institution, from one State, Territory, Puerto Rico, Virgin Islands, or District of the United States, or place noncontiguous but subject to the jurisdiction thereof, or from any foreign country, into any State, Territory, Puerto Rico, Virgin Islands, or District of the United States, or place noncontiguous but subject to the jurisdiction thereof, shall be punished by a fine of not more than \$1,000 or by imprisonment of not more than one year, or both: Provided, that nothing herein shall apply to commodities manufactured in Federal or District of Columbia penal and correctional institutions for use by the Federal Government or the District of Columbia Government or to commodities manufactured in any State penal or correctional institution for use by any other State, or States, or political subdivisions thereof; to parts for the repair of farm machinery; or to agricultural commodities: Provided further, that this section shall go into effect one year after its approval by the President."

It will be seen by reading the above statute that in order for you to be allowed to ship the green beans to the Department of Public Welfare of the State of Ohio, they must first come within the proviso which exempts certain commodities from the operation of said act. They must be either "commodities manufactured in any State penal or correctional institution for

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use by any other State, or States, or political subdivisions thereof," or they must be "agricultural commodities." Our view is that they are not manufactured commodities. In *City of Memphis vs. St. Louis and S.F.R. Co.*, 183 Fed. 529, 538, will be found a collection of definitions by the various courts of what constitutes manufacturing and manufactured articles. The gist of all of said definitions is that "manufacture" implies the production of some new article by the application of skill and labor to raw materials. So long as the article upon which skill and labor has been applied remains the same article as it was before, then no manufacturing has been done. Numerous instances are pointed out in said decision of processing or other handling of articles which do not amount to manufacturing. For instance, the cutting of natural ice into pieces of a convenient size for handling and storing the pieces so cut in a building, has been held not to be manufacturing. Likewise, the roasting, mixing and grinding of coffee has been held not to be manufacturing. These and other examples were pointed out in the foregoing case, and upon authority of such definitions the court in that case held that the operation of a cotton press so as to compress, rebind and recover original bales of cotton so as to change the form, size and condition of the bales to make them more convenient for transportation, was not manufacturing. In view of the foregoing holdings we think that the canning of beans is not a manufacturing process and that the canned beans are not a manufactured commodity. After canning, they are still beans and have not been changed into any new article or product.

The next question to determine is whether green beans are an agricultural product. Of this we think there can be little doubt, since they are a direct product of the soil. A definition of the term, "agricultural commodities," is found in the case of *In re Rodgers*, 279 N. W. 800, 802, in the following language:

"The first question for our consideration is: What is meant by agricultural commodities?"

"In the case of *District of Columbia v. Oyster*, 4 Mackey 285, 15 D. C. 285, 54 Am. Rep. 275, in the body of the opinion the court said (page 286):

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"But the common parlance of the country, and the common practice of the country, have been to consider all those things as farming products or agricultural products which had the situs of their production upon the farm, and which were brought into condition for the uses of society by the labor of those engaged in agricultural pursuits, as distinguished from manufacturing or other industrial pursuits."

Section 396b (18 U.S.C.A.) forbids the transportation or procuring of transportation of any goods, wares and merchandise produced wholly or in part by convict labor into any state "where said goods, wares and merchandise are intended by any person interested therein to be received, possessed, sold, or in any manner used, either in the original package or otherwise in violation of any law of such State * * *." We have examined the statutes of the State of Ohio and we do not find any statute of that State which forbids the use of articles manufactured or produced by convict labor by the state or its political subdivisions. Ohio does have a statute which requires the marking or labeling of said articles before being offered for sale, but in your case the articles will not be offered for sale, and hence you could not be charged with knowing that the articles are to be sold or used in violation of the Ohio statute. Therefore, Section 396b, supra, will not prevent you from shipping the green beans to the Department of Public Welfare of the State of Ohio.

Section 396c (18 U.S.C.A.) provides as follows:

"All packages containing any goods, wares, and merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, when shipped or transported in interstate or foreign commerce shall be plainly and clearly marked, so that the name and address of the shipper, the name and address of the consignee, the

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nature of the contents, and the name and location of the penal or reformatory institution where produced wholly or in part may be readily ascertained on an inspection of the outside of such package."

The latter section clearly requires that you mark all packages containing articles produced wholly or in part by convict labor before shipping them in interstate commerce. Therefore, it will be necessary for you to mark the packages containing the green beans in question, in accordance with the provisions of Section 396c, supra.

Conclusion

It is, therefore, the opinion of this office that you can ship a carload of canned green beans produced by convict labor in the State of Missouri to the Department of Public Welfare of the State of Ohio, but that it will be necessary that you mark the packages containing said beans in accordance with Section 396c (18 U.S.C.A.).

Respectfully submitted,

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Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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