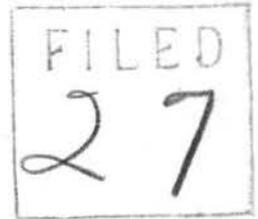


AGRICULTURE: It is lawful to sell colored oleomargarine in the
OLEOMARGARINE: State of Missouri.



June 29, 1948

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Honorable R. A. Esterly
Assistant Prosecuting Attorney
Jasper County
Joplin, Missouri

Dear Sir:

This is in reply to your letter of recent date requesting an official opinion of this department and reading, in part, as follows:

"One of our local grocers has been advised by a large manufacturer of colored oleomargarin that there is no State law limiting his right to sell colored oleo in this community and that by obtaining the necessary Federal licenses there is no criminal liability in connection with such sales. This grocer has called on me for an opinion and in view of the various conflicting statutes on this matter, I would appreciate your advice.

"My attention is particularly called to Section 14073 of the Revised Statutes of 1939, but I am not entirely satisfied with my interpretation of this statute since it would appear that if this law would prevent the merchant from selling colored oleo it would also prevent even a housewife from mixing artificial color into her margarin."

The sections of the law to be considered with regard to your request are Sections 4776, 14073, and 4778, R. S. Mo. 1939. Such sections provide as follows:

Section 4776. "Whoever manufactures out of any oleaginous substances, or any compounds of the same, resembling butter in appearance, manufactured from cattle fat

or hog fat, or such substances heretofore known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine and neutral, all lard extracts and tallow extracts, and all mixtures and compounds of tallow, beef fat, suet, lard, lard oil, vegetable oil, annatto and other coloring matter, intestinal fat and offal fat, other than that produced from unadulterated milk, or cream from the same, any article designed to take the place of butter or cheese, produced from pure, unadulterated milk, or cream of the same, or any article made in imitation of butter, or when so made calculated, or intended to be sold as butter or for butter, unless said manufacturers shall pack said imitation substitute in firkins, tubs or wooden or paper packages, with the true name of said imitation substitute clearly and indelibly branded, marked or labeled thereon, or whoever shall sell or offer for sale the same as an article of food, unless said imitation substitute is properly packed in firkins, tubs or wooden or paper packages, with the true name of said imitation substitute clearly and indelibly branded, marked or labeled thereon, shall be guilty of a misdemeanor, and shall on conviction thereof be confined in the county jail not exceeding one year, or fined not exceeding one thousand dollars, or both."

Section 14073. "No person shall combine any animal fat or vegetable oil or other substance with butter, or combine therewith or with animal fat or vegetable oil or combination of the two, or with either one, any other substance or substances whatever, any annatto or compound of the same, or any other substance or substances, for the purpose or with the effect of imparting thereto a yellow color, or any shade of yellow, so that such substitute shall resemble yellow or any shade of genuine yellow butter, nor introduce any such coloring matter or such substance or substances into any of the articles of which the same is composed: Provided, nothing in said sections

14072 to 14084 shall be construed to prohibit the use of salt and harmless coloring matter for coloring the substitutes for butter manufactured for export or sale outside the state. No person shall, by himself, his agents or employees, produce or manufacture any substance in imitation or semblance of natural butter, nor sell, nor keep for sale, nor offer for sale, any imitation butter made or manufactured, compounded or produced in violation of this section, whether such imitation butter shall be made or produced in this state or elsewhere. This section shall not be construed to prohibit the manufacture and sale, under the regulations hereinafter provided, of substances designed to be used as a substitute for butter, and not manufactured or colored as herein prohibited."

Section 4778. "That for the purposes of this section certain manufactured substances, certain extracts, and certain mixtures and compounds, including such mixtures and compounds with butter, shall be known and designated as 'oleomargarine,' namely: All substances heretofore known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef, fat, suet, lard, lard oil, vegetable oil, annatto, and other coloring matter, intestinal fat, and offal fat--if (1) made in imitation or semblance of butter, or (2) calculated or intended to be sold as butter or for butter, or (3) churned, emulsified, or mixed in cream, milk, water, or other liquid, and containing moisture in excess of 1 per centum. This section shall not apply (1) to puff pastry shortening not churned or emulsified in milk or cream, and having a melting point of one hundred and eighteen degrees Fahrenheit or more, nor (2) to any of the following containing condiments and spices: Salad dressing, mayonnaise dressings, or mayonnaise

products, nor (3) to pharmaceutical preparations. Oleomargarine made and manufactured from the ingredients, commodities or combinations thereof herein named and set forth shall be sold or offered for sale only when the containers or cartons thereof have printed thereon the word 'oleomargarine.' Any person, firm or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, fined not less than fifty (\$50.00) dollars not more than two hundred (\$200.00) dollars, for each and every offense."

Section 4776 was enacted in its present form in 1887 and is found Laws 1887, page 174. The emergency clause of such act provides as follows:

"The fact that the business interest of the state of Missouri is suffering by the prohibition of the manufacture and sale of butter substitutes therein, creates an emergency within the meaning of the constitution; therefore, this act shall take effect and be in force from and after its passage."

From the language above quoted, it is clear that in enacting Section 4776, oleomargarine was considered by the Legislature to be a butter substitute.

Section 14073 was enacted in 1895 and is found Laws 1895, page 26, Section 2. In the case of Bockstruck, 136 Mo. 335, a conviction under this section was upheld where the evidence showed that yellow oleomargarine was sold. In the case of State v. Swift & Co., 273 Mo. 462, 200 S. W. 1066, the Supreme Court held that this section prohibited the selling, keeping for sale, or offering for sale of oleomargarine colored to resemble butter. Under these holdings of the Supreme Court, the provisions of Section 14073, prohibiting the sale, keeping for sale, or offering for sale of any oleomargarine colored to resemble butter, constituted an exception to Section 4776, in so far as Section 4776 permitted the sale of oleomargarine colored with annatto and other coloring matter.

Section 4778 was enacted in 1929 and is found Laws 1929, page 107, and was enacted some thirty-four years after Section 14073 was enacted. A general rule of statutory construction is

found in State v. Carolene Products Co., 144 S. W. (2d) 153, l. c. 156, where the Supreme Court said:

"Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication." Quoted with approval in the case of State ex rel. Buchanan County v. Fulks, 296 Mo. 614, 247 S. W. 129, loc. cit. 132."

Since Section 4778 is a statute which deals specifically and in detail with oleomargarine and was enacted later than Section 14073, we believe that that part of Section 4778 reading:

" * * * Oleomargarine made and manufactured from the ingredients, commodities or combinations thereof herein named and set forth shall be sold or offered for sale only when the containers or cartons thereof have printed thereon the word 'oleomargarine.'
* * *"

constitutes an exception to Section 14073, in so far as Section 14073 prohibits the sale of oleomargarine which is colored yellow, and that Section 4778 makes lawful the sale of oleomargarine which has been colored yellow if the container of the oleomargarine has printed thereon the word "oleomargarine."

Honorable R. A. Esterly

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CONCLUSION

It is the opinion of this department that it is lawful in the State of Missouri to sell oleomargarine which has been colored yellow when the containers or cartons thereof have printed thereon the word "oleomargarine."

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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