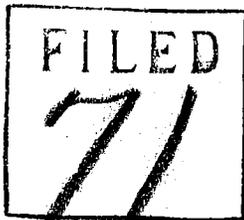


AGRICULTURE: The Commissioner of Agriculture, his agents or licensed A and C graders do not have the authority to destroy, by dumping, illegal cream.



November 15, 1954

Mr. Paul L. Porter
Director, Dairy Division
Department of Agriculture
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office, which request reads in part as follows:

"The problem in question: 'Can condemned cream be legally disposed of by pouring down the drain, rather than being returned to the producer?'

* * * * *

"I am respectfully submitting this problem to you for your opinion as to whether creameries, upon condemning cream, may legally dispose of same by dumping."

Section 196.550, RSMo 1949, provides as follows:

"The commissioner or his agents, or any licensed A or C grader, are hereby given authority to condemn any illegal dairy product which is delivered, sold, accepted, purchased, or held in possession for human food purposes, and shall tag the same as an unlawful product, and it shall be unlawful to remove or deface any such tags so long as the container to which it is attached contains the product identified by the tag. The commissioner, or his agent, or any licensed A or C grader, shall also color such illegal dairy product with a permanent and harmless coloring matter sufficient to show unmistakably that such product is illegal. It shall be unlawful to sell or offer for sale or to buy for use as human food or for the manufacture of human food any illegal dairy product."

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Section 196.520 (65) defines the term "Unlawful cream" as follows:

"'Unlawful cream' is cream which contains or has contained dirt, oil, or other foreign or extraneous matter that renders it unfit for human consumption, or that is stale, cheesy, rancid, putrid, or is decomposed. Unlawful cream is hereby declared to be injurious to the public health, and immediately upon its examination and discovery by any licensee hereunder, the title thereto shall immediately vest in the commissioner for the purpose of effectively removing it from the possible use in human food. Such unlawful cream is hereby declared to be contraband, and may be seized by an agent of the commissioner, or any A or C licensee hereunder;"

It is, of course, fundamental that the primary rule of statutory construction is to ascertain and give effect to the intention of the legislature, taking into consideration the purpose sought to be accomplished by the legislation. *Roberts v. City of St. Louis*, 242 S.W. 2d 293. We believe that it is evident from a reading of the above two noted provisions that it was the purpose of the legislation to provide a means of removing adulterated cream from the channels of human consumption and to provide a method to effectuate such removal. Section 196.550, supra, provides that the Commissioner of Agriculture or his agents, or any licensed A or C grader, shall color such illegal dairy product with a permanent and harmless coloring matter. This procedure, we believe, sufficiently removes the product from the channels of human consumption, as contemplated by the purpose of the act and by providing such method, rather than absolute destruction, and indicating that the coloring matter shall be harmless is sufficient indication that the legislature did not intend to render the product valueless for all purposes. Likewise, while Section 196.520 (65) provides that unlawful cream shall be deemed contraband and that title thereto shall vest in the Commissioner of Agriculture, such title only vests "for the purpose of effectively removing it from the possible use in human food," again indicating that the intention was not to deprive the owner of the use of such cream for purposes other than human consumption.

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CONCLUSION

Therefore, it is the opinion of this office that the Commissioner of Agriculture, his agents or licensed A or C graders do not have the authority to dump or otherwise destroy illegal cream, but are relegated to their statutory duty of coloring such cream to prevent its possible use in human food.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Yours very truly,

John M. Dalton
Attorney General

DDG/vtl