

LOCKER PLANTS:  
FOOD AND DRUGS:  
FROZEN FOOD LOCKERS:  
PROSECUTING ATTORNEY:  
INJUNCTION:  
CRIMINAL LAW:

Prosecuting attorney can file criminal charges or institute injunction proceedings against person operating a locker plant without a license as required by law; and prosecuting attorney can institute injunction proceedings against a person who violates any provisions of the locker plant law, including the one requiring an annual license as mentioned above.



January 11, 1957

Honorable Clyde E. Rogers  
Prosecuting Attorney  
Howard County  
Fayette, Missouri

Dear Mr. Rogers:

On November 28, 1956, your immediate predecessor to the office of Prosecuting Attorney requested an official opinion from this office which reads as follows:

"Section 196.515 RSMo 1949 states that the provisions of Section 196.450 to 196.515 may be enforced by injunction. No criminal penalty is provided for the wilful refusal to obtain a license upon payment of the required fee. What is the duty of the Prosecuting Attorney when an individual operating a locker plant in the county refuses to obtain a license by payment of the required fee?"

Chapter 196, RSMo 1949, and the Missouri Cumulative Supplement 1955, covers and is entitled "Food and Drugs." In 1945, the General Assembly enacted fourteen new sections to be added to this chapter, which are Sections 196.450 to 196.515, RSMo 1949, and they are entitled "An Act to Regulate the Operations of Plants for the Cold Storage of Foods in Individual Lockers." This is a proper exercise of the state's police power to protect the health and safety of the public. See Bacon v. Walker, 27 Sup. Ct. 289, 204 U.S. 311.

These fourteen sections do not say that anyone who violates their provisions shall be guilty of a misdemeanor or a felony, but they convey the idea that violators of their provisions will not go unpunished. Section 196.455, supra, says:

"It shall be unlawful for any person, firm, copartnership or corporation to operate a locker plant in this state unless such person, firm, copartnership or corporation has secured an annual license therefor from the department. \* \* \*."

If a certain individual in Howard County is operating a locker plant and refusing to obtain a license as required by the section

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mentioned above, he is doing an "unlawful act." "It is an act contrary to law," (See Webster's, Black's, and Bouvier's definition of an unlawful act.) and he is accountable. Chapter 564, RSMo. 1949, is entitled "Offenses Against Public Health and Safety." Section 564.320 provides as follows:

"If any person shall carry on or transact any business or occupation without license therefor, when such license is required by any law of this state, he shall be deemed guilty of a misdemeanor, and when no other punishment is prescribed for such offense, be fined in any sum not exceeding one hundred dollars or be imprisoned in the county jail not exceeding three months, or both."

This section is applicable to our problem here. Therefore, we hold a prosecuting attorney can file criminal charges against a person who operates a frozen food locker without a license as required by law. However, we might point out that this criminal statute applies only when the individual is violating Section 196.455, supra (which requires a license), and does not apply where the individual is violating other sections of the locker plant law.

This is not, however, the only remedy available to the prosecuting attorney. There is another. We might at this point call your attention to the fact that this other remedy, which is discussed below, is applicable to an individual who violates any provisions of the locker plant law, including that section (Section 196.455, supra) requiring an annual license.

Section 196.515, supra, provides: "Injunction may issue by any court of competent jurisdiction to enforce the provisions hereof." Though the statute does not expressly authorize the prosecuting attorney to bring the action, the purpose of the regulation of locker plants is for the protection of the health and safety of the public, and therefore, the State of Missouri is vitally interested in the violation of laws wherein the public is concerned. Further, if no one could institute the proceedings, the law would be meaningless and of no effect, which was not the intention of the legislature. Also, this is a county and not a state-wide matter. It is within the jurisdiction of the local prosecuting attorney and he may institute injunction proceedings to enforce the provisions of the locker plant law. As stated in *State v. Sullivan*, 283 Mo. 546, 224 S.W. 327, 331 (1,2):

"\* \* \* The rule is that such prosecuting officer cannot proceed in the name of the state, save and except the matters involved are matters arising within and pertaining to the jurisdiction of such prosecuting

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officer. In other words, they must be matters which concern the state in the limited territory over which such officer has control or in which he has power to act. His limit is the county for which he was elected. Westhues, as prosecuting attorney of Cole County, can use the name of the state in such matters in which the state is interested within the confines of the said county of Cole.\* \* \*."

Section 56.060, RSMo. 1949, expressly provides that "the prosecuting attorneys shall commence and prosecute all civil and criminal actions in their respective counties in which the county or state may be concerned \* \* \*." Section 56.070, RSMo. 1949, provides that "He shall prosecute or defend, as the case may require, all civil suits in which the county is interested \* \* \*." And as stated in *State v. Powell*, 359 Mo. 321, 221 S.W. 2d 508, 510 (4), "Neither the word 'concerned' nor the word 'interested' is defined, but one of the definitions given for the word 'concerned' is 'affected, disturbed, troubled, interested; as to be concerned for one's safety.' Webster's New International Dictionary (Second Edition). There can be no doubt that the state was interested, concerned and affected by the illegal transfer and dissipation of the Teachers' Funds of this school district."

There is dictum which is in point in *State v. Kurn*, Mo.App., 119 S.W. 2d 62, 64 (1,2), which says, "It may be conceded that there are circumstances under which the state acting through the prosecuting attorney may proceed by injunction to obtain relief. As we understand the law, where such a proceeding is justifiable, it is where there is an infringement of the rights of the public involved. \* \* \*."

In none of the cases mentioned above were there statutes expressly authorizing the prosecuting attorney to act, but he was allowed to act in the name of the state where the latter had an interest in the case. We hold the State of Missouri is interested, concerned, and affected when its laws relating to the operation of locker plants are being violated.

#### CONCLUSION

It is therefore the opinion of this office that if a person, firm, copartnership or corporation is operating a locker plant without a license as required by Section 196.455, supra, the local prosecuting attorney can institute injunction proceedings against said violator or file criminal charges against him; and if a person is violating other sections of the locker plant law other than the section requiring an annual license, the prosecuting attorney can file injunction proceedings against such person to enforce the provisions of the locker plant law.

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The foregoing opinion, which I hereby approve, was prepared by my Assistant, George E. Schaaf.

Yours very truly,

JOHN M. DALTON  
Attorney General

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