

August 24, 1964



Dr. H. M. Hardwicke  
Acting Director  
Division of Health  
Jefferson City, Missouri

Dear Dr. Hardwicke:

In your request for an opinion you inquire as to the authority of the Division of Health to enforce "food service sanitation regulations" in restaurants throughout the State of Missouri. The applicable Missouri statutes appear to be as follows:

"192.020. To safeguard the health of the people of Missouri.--It shall be the general duty and responsibility of the division of health to safeguard the health of the people in the state and all its subdivisions. It shall make a study of the causes and prevention of diseases. It shall designate those diseases which are infectious, contagious, communicable or dangerous in their nature and shall make and enforce adequate orders, findings, rules and regulations to prevent the spread of such diseases and to determine the prevalence of such diseases within the state. It shall have power and authority, with approval of the director of public health and welfare, to make such orders, findings, rules and regulations as will prevent the entrance of infectious, contagious and communicable diseases into the state."

"196.190. To what places law applies. -- Every building, room, basement, or cellar occupied or used as a bakery, confectionery, cannery, packinghouse, slaughterhouse, restaurant,

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hotel, dining car, grocery, meat market, dairy, creamery, butter factory, cheese factory, or other place or apartment used for the preparation for sale, manufacture, packing, storage, sale or distribution of any food, shall be properly lighted, drained, plumbed and ventilated and conducted with strict regard to the influence of such condition upon the health of the operatives, employees, clerks or other persons therein employed, and the purity and wholesomeness of the food therein produced; and for the purpose of sections 196.190 to 196.265, the term "food", as used herein, shall include all articles used for food, drink, confectionery condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof."

"196.230. Abatement of violations by director.--The director of the division of health and his assistants or agents by him appointed, the state, county, city and town health officers shall have full power at any time to enter and inspect every building, room, basement or cellar, occupied or used, or suspected of being used, for the production for sale, manufacture for sale, storage, sale, distribution or transportation of food and all utensils, fixtures, furniture and machinery used as aforesaid, and if upon inspection any food producing or distributing establishment, conveyance, employer, operative, employee, clerk, driver or other person is found to be violating any of the provisions of sections 196.190 to 196.265, or if the production, cooking, preparation, manufacture, packing, storing, sale, distribution or transportation of food is being conducted in a manner detrimental to the health of the employees and operatives and the character or quality of the food therein

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being produced, manufactured, packed, stored, sold, distributed or conveyed, the officer or inspector, making the examination or inspection, shall furnish evidence of said violation to the prosecuting attorney of the county in which the violation occurs, and it shall be the duty of all prosecuting attorneys to represent and prosecute, in behalf of the people, when called upon by the director of the division of health to do so, all such cases of offenses arising under the provisions of sections 196.190 to 196.265. When complaint is made by the said director of the division of health, security for costs shall not be required of the complainant in any case at any time of the prosecution or trial."

"196.240. Authorization by director to close health menace. -- It shall be the duty of the director of the division of health, and he is hereby authorized and empowered, to close any market place, grocery store, general store, bakery, confectionery, butcher shop, slaughterhouse, dining car, refrigerator car, cold storage plant or warehouse, hotel dining room or kitchen, cafe, restaurant, lunch counter, drug store, or any other place, or places, where articles or commodities intended for human food, or for human consumption as medicine, are manufactured, sold, stored or prepared for sale, or wherever food and drink is served, where such places shall, in the judgment of said director, constitute a menace to the public health, by reason of dirt, filth, or other insanitary cause."

"196.265. Penalty for violation.--Any person who shall fail, or refuse, to obey any order of the director of the division of health to close any place, or places, mentioned in section 196.240, or who shall exhibit or expose for sale in any show window upon any sidewalk, any vegetables or other articles or commodities whatsoever intended for human food, in violation of any order of the director, or who shall, in any way, resist or interfere with the directors in the enforcement of sections 196.190 to 196.265,

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or any order of the director made pursuant to the authority of this law, shall be deemed guilty of a misdemeanor."

Reading these sections together, we have reached the following conclusions in regard to your respective questions:

(1) "Food Service Establishment," as defined in Paragraph 11 of Section A of your Regulations is consistent with and comes within the scope of authority authorized by Section 196.190 RSMo 1959.

(2) It is our opinion that Section 192.020 authorizes the promulgation of the Regulations about which you have inquired. We are further of the opinion that Sections 196.190 to 196.265 are applicable where these Rules and Regulations have been violated. Reading these sections together, we believe that the penalties there enumerated can be invoked, in an appropriate fact situation. In other words, it appears that Section 196.240 authorizes the director to close a food service business if it is operating as a health menace and contrary to these Rules and Regulations. It also appears that under Section 196.265 the person resisting the enforcement of these provisions would be operating unlawfully.

(3) As to the right of entry for the purpose of making inspections, we believe that Section 196.230 adequately defines the circumstances under which inspections may be made. That section provides that the health officer shall have full authority to inspect if the building involved is "occupied or used, or suspected of being used, for the production for sale, manufacture for sale, storage, sale, distribution or transportation of food \* \* \*".

It appears to us that this right of inspection would be limited only by the requirement that it be done at reasonable times and that the facts recited above exist at the time the inspection is made.

Yours very truly,

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THOMAS F. EAGLETON  
Attorney General