

DIVISION OF HEALTH:  
AGRICULTURE:

The provisions of the Missouri Dairy Law, Section 196.520 to Section 196.690, RSMo, do not prevent the Missouri Division of Health from exercising authority under the provisions of the Missouri Food, Drug and Cosmetics Act, Sections 196.010 to 196.120, RSMo.

OPINION NO. 19

July 6, 1970

L. M. Garner, M.D.  
Acting Director  
Department of Health  
Broadway State Office Building  
Jefferson City, Missouri 65101



Dear Doctor Garner:

This opinion is in response to your request which states as follows:

"May the Division of Health take action against an establishment or individual under the provisions of Sections 196.010 to 196.120, Revised Statutes of Missouri 1959 even though other Sections of Missouri Statutes assign authority to license and/or inspect said establishment to another agency of this State?

"This question is prompted by a request from the Missouri Department of Agriculture for assistance in eliminating manufacture and sale of adulterated cheese by cheese plants in Missouri. The General Assembly has vested the authority for the enforcement of the 'Missouri Dairy Law' (Sections 196.525 to Section 196.690 Revised Statutes of Missouri) to the Department of Agriculture. The Dairy Law requires the Department of Agriculture to inspect and license dairy products manufacturing plants.

The 'Missouri Food, Drug and Cosmetic Act'

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(Sections 196.010 to 196.120) deals specifically with, and prohibits, adulteration, misbranding, false advertising and giving of guarantees for any food, drug or cosmetic.

"The question being asked is one which frequently arises when we are confronted with segments of the food industry which are inspected by other agencies, but perhaps without the consumer protection objectives of the Missouri Food, Drug and Cosmetic Act. Certainly, most, if not all, of the acts lack the comprehensive coverage of the specific areas of adulteration and misbranding as afforded by Sections 196.010 to 196.120 Revised Statutes of Missouri."

Section 196.535, RSMo 1959, vests the administration of the Missouri Dairy Law, which is contained within Sections 196.520 to 196.690, in the Commissioner of Agriculture. On the other hand, Section 196.045, RSMo 1959, vests the enforcement of the Food, Drug and Cosmetic Act, Sections 196.010 to 196.120 in the Division of Health.

The Missouri Dairy Law concerns dairy products which are stated and defined in the definition section of Section 196.525, RSMo Supp. 1967, whereas Section 196.015, RSMo 1959, pertains to food products in general as well as drugs, devices or cosmetics. Normally, it would seem that where specific powers and duties are restricted to, or vested in a specific office or body, others are prohibited from carrying out or exercising them. 73 C.J.S., Public Administrative Bodies and Procedure, Section 53, pp. 375-376. However, the powers and duties of particular administrative officers and agencies as against other officers and agencies are determined by the organic and statutory provisions which grant them their powers and define their duties.

We recognize that the Commissioner of Agriculture is authorized to promulgate regulations with respect to the Missouri Dairy Law. Section 196.555, RSMo 1959. Similarly, the Division of Health is authorized to promulgate regulations for the efficient enforcement of the Food, Drug and Cosmetic Act. Section 196.045, RSMo 1959. The question is, therefore, whether or not the Division of Health is precluded from acting under the authority vested in it for the enforcement of the Food, Drug and Cosmetic Act with respect to dairy products.

In our view, there is no readily determinable conflict

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between the Missouri Dairy Law and the Food, Drug and Cosmetic Act. Essentially the Missouri Dairy Law, while containing numerous provisions that deal with sanitation, adulteration and other health measures, is nevertheless a licensing law as well as a health, sanitation and standards law.

Section 196.530, RSMo 1959, makes it clear that all dairy products bought or sold or offered or exposed for sale in this state shall not fall below the standards of quality in the ingredients provided for by the Missouri Dairy Law. This section would at least appear to indicate that the legislature did not intend that other applicable statutes might not provide for greater standards than those provided in the Dairy Law.

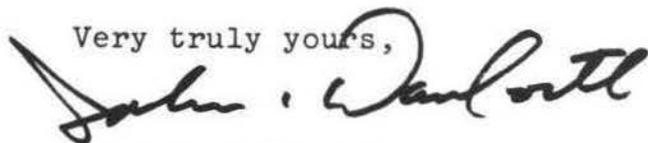
Our comparison and analysis of the Food, Drug and Cosmetic Act leads us to the conclusion that it is of a much greater scope than the provisions contained in the Missouri Dairy Law. Since both enactments are substantially concurrent, it is not possible to say that one being of a later date controls over the other. Nor is it possible, from our analysis, to say that the Missouri Dairy Law was enacted to the exclusion of the application of the Food, Drug and Cosmetic Act.

#### CONCLUSION

It is the opinion of this office that the provisions of the Missouri Dairy Law, Section 196.520 to Section 196.690, RSMo, do not prevent the Missouri Division of Health from exercising authority under the provisions of the Missouri Food, Drug and Cosmetic Act, Sections 196.010 to 196.120, RSMo.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

Very truly yours,



JOHN C. DANFORTH  
Attorney General