

OPINION NO. 87-001

Syllabus:

1. An advertising device which promotes the consumption of beef or pork products and is located on property where such animals are bred or fattened for market, is an advertising device which identifies the goods produced or sold on such property under R.C. 5516.02(C) and R.C. 5516.06(C).
2. An advertising device which promotes agriculture and is located on property where agricultural goods are produced, is an advertising device which indicates the name of the business conducted on such property under R.C. 5516.02(C) and R.C. 5516.06(C).

To: Warren J. Smith, Director, Ohio Department of Transportation, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, February 4, 1987

I have before me your request for my opinion concerning certain billboards located along highways in Ohio. From your request and from subsequent conversations with members of your staff, it is my understanding that the billboards in question belong to two basic categories. One group of billboards promotes the consumption of beef or pork. A second group of billboards promotes the agricultural industry. The construction of both types of billboards is subsidized in part by trade associations organized to promote the advertised commercial interest. Each billboard is located within six hundred sixty feet of the edge of the right-of-way of an interstate highway as defined in R.C. 5516.01(C), or a primary state highway as defined in R.C. 5516.01(G). Cattle is raised on the property where advertising devices promoting the consumption of beef are located. Likewise, pigs are raised on the property where billboards promoting the consumption of pork are located. The signs which promote agriculture are located on farms. In most instances, neither the animals nor the agricultural products raised on the properties in question are sold on the premises. In light of my conversations with your staff, I have rephrased your questions as follows:

1. Is a billboard which promotes the consumption of beef or pork an advertising device which identifies the goods produced, sold or services rendered on the property under R.C. 5516.02(C) and R.C. 5516.06(C), when the activity conducted on the premises is the breeding and fattening of cows and pigs for market and not the sale of dressed beef or pork?
2. Is a billboard which promotes the agricultural industry and is located on property where agricultural goods are produced, an advertising device indicating the name of the business or profession conducted on the property under R.C. 5516.02(C) or indicating the name of the business, profession or activities conducted on the property under R.C. 5516.06(C)?

Under the Federal Highway Beautification Act, 23 U.S.C. §131, each state is required to effectively control the erection and maintenance of advertising signs, displays, and devices along the interstate and primary federal-aid highway systems as a condition precedent to the receipt of federal funds for highway construction and maintenance. See also 23 C.F.R. §750. The regulation of advertising devices along roads within the State of Ohio is provided for by R.C. Chapter 5516. With noteworthy exceptions, R.C. 5516.02 forbids the erection or maintenance of advertising devices along interstate highways, and provides in pertinent part:

No advertising device shall be erected or maintained within six hundred sixty feet of the edge of the right of way of a highway on the interstate system except the following:

...
 (C) Advertising devices indicating the name of the business or profession conducted on such property or which identify the goods produced, sold, or services rendered on such property.

See also R.C. 5516.01 (defining several terms as used in R.C. Chapter 5516);¹ Weir v. Rimmelin, 15 Ohio St. 3d 55, 472 N.E.2d 341 (1984)(the regulation of outdoor advertising along interstate and primary highways is a proper exercise of the state's police power); Ghaster Properties, Inc. v. Preston, 176 Ohio St. 425, 200 N.E.2d 328 (1964)(in general application, R.C. 5516.01 to R.C. 5516.05 are valid and constitutional).

Similarly, R.C. 5516.06 proscribes the erection or maintenance of advertising devices along state primary highways, and provides:

No advertising device shall be erected within six

¹ R.C. 5516.01 provides in part:

As used in sections 5516.01 through 5516.13, inclusive, of the Revised Code:

(A) "Advertising device" includes any outdoor sign, display, figure, painting, drawing, message, placard, poster, billboard, or any other contrivance designed, intended, or used to advertise or to give information in the nature of advertising, or any part thereof, which advertisement is visible from the traveled way of any highway on the interstate system or primary system in this state.

...
 (C) "Interstate system" means the system of highways as defined in subsection (d), 23 U.S.C. 103, 74 Stat. 415 (1960), or amendments thereof.

(D) "Erect" means to construct or allow to be constructed, but it shall not include any activity when performed as an incident to the change of advertising message or normal maintenance of a sign or sign structure.

(E) "Maintain" means to preserve, keep in repair, continue, allow to exist, or restore if destroyed by an act of God or vandalism.

hundred sixty feet of the edge of the right-of-way of a highway on the primary system except the following:

...
 (C) Advertising devices indicating the name of the business, activities or profession conducted on such property or which identify the goods produced, sold or services rendered on such property.

See also R.C. 5516.01(G)(defining the "primary system" as "that portion of the state highway system as designated or as may hereafter be designated by the state, which has been approved by the secretary of transportation of the United States pursuant to subsection (b), 23 U.S.C. 103, 70 Stat. 374 (1956)"); Weir v. Rimmelin. R.C. 5516.02 and R.C. 5516.06, thus, limit permissible advertising devices along the interstate and primary systems to, inter alia, the specified "on-premise" advertising devices.

I turn now to the first question which you present, concerning billboards promoting the consumption of beef and pork. As noted above, the animals raised on the property in question are ultimately marketed as butchered or "dressed" beef or pork. Subsequent to your letter of request, you informed my staff that, as a general rule, neither live animals nor their meat is marketed on the premises. Thus, your first question presents the issue whether a billboard which promotes the consumption of "beef" or "pork" is an advertising device which identifies the goods produced or sold on the property pursuant to R.C. 5516.02(C) and R.C. 5516.06(C), where the actual activity conducted on the premises is the breeding and fattening of cows and pigs for market rather than the sale of dressed beef or pork.

I must first determine whether the breeding and fattening of cattle and pigs is the production or sale of goods. Thus, I must ascertain whether cows or pigs may properly be called "goods." The word "goods" is capable of both broad and narrow interpretations.² However, in 1958 Op. Att'y Gen. No. 3040, p. 600, it was stated that the statutory exceptions to R.C. 5516.02 should be broadly construed.³ It is evident, therefore, that the meaning of "goods" intended by the legislature is the broad definition commonly associated with the sale of commercial products. Although not directly applicable, R.C. 1302.01(A)(8)(Uniform Commercial Code § 2-105(1)) is instructive in this context, defining "goods" as "all things...which are moveable...includ[ing] the unborn young of animals." See also Webster's New World Dictionary 602 (2d college ed. 1979)(defining "goods" as "moveable personal property"). As is suggested by the express inclusion of unborn

² According to Black's Law Dictionary 624 (5th ed. 1979), the word "goods" is a term "of variable content and meaning. It may include every species of personal property or it may be given a very restrictive meaning."

³ The rule of construction found in 1958 Op. Att'y Gen. No. 3040, p. 680 that, with reference to R.C. 5516.02, the statutory exceptions thereto should be broadly construed, is also applicable to my analysis of R.C. 5516.06 because the word "goods" is used in an identical context in both R.C. 5516.02(C) and R.C. 5516.06(C). Therefore, a consistent interpretation is warranted.

animal young in R.C. 1302.01(A)(8), animals such as those discussed herein are commonly treated as "goods." See, e.g., Grovedale Feed Co. v. Corron, 79 Ohio L. Abs. 334, 155 N.E.2d 291 (Findlay Mun. Ct. 1957); Vorthman v. Myers Enterprises, 296 N.W.2d 772, 30 U.C.C. 924 (Iowa 1980). Thus, I conclude that cattle and pigs are "goods", as that term is used in R.C. 5516.02(C) and R.C. 5516.06(C).

I must next consider whether the animals are "produced" or "sold" on the property. It is my understanding that the usual practice of the trade is to sell the animals at auctions located off of the premises. In some instances, however, the animals are sold on the property. Where animals are not removed from the property before sale, they certainly constitute goods "sold" on the property under R.C. 5516.02(C) and R.C. 5516.06(C). However, where the animals are raised, but not sold on the premises, it must be determined whether the animals are "produced" on the property in order to qualify for the exception contained in division (C) of these statutes.

It is a general rule of statutory construction that words are to be accorded their natural, literal and ordinary meaning, where they are not statutorily defined. Lake County National Bank v. Kosydar, 36 Ohio St. 2d 189, 305 N.E.2d 799 (1973); Cleveland v. Public Utilities Commission, 130 Ohio St. 503, 200 N.E. 765 (1936). R.C. 1.42 also provides that "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." The verb "produce" is defined as "to bring forth; bear; [or] yield." Webster's New World Dictionary 1134 (2d college ed. 1982). Thus, because breeding and raising animals falls within this broad definition, I conclude that cattle and pigs are "produced" on the property for purposes of R.C. 5516.02(C) and R.C. 5516.06(C).

Finally, having determined that cattle and pigs are goods which are sold or produced on the property, I must decide whether a billboard which promotes the consumption of "beef" and "pork" is an advertising device which identifies cattle or pigs. Again, I believe that it must be the ordinary meaning of the words which determines the applicability of R.C. 5516.02(C) and R.C. 5516.06(C) to these advertising devices. In everyday use, the words "beef" and "pork" not only connote the dressed product as it is finally marketed, but also the animal itself. "Beef" is defined as "a full-grown ox, cow, bull or steer, especially one bred and fattened for meat." Webster's New World Dictionary 126 (2d college ed. 1982). Likewise, "pork" is defined as "a pig or hog." Id. at 1109. Thus, I conclude that R.C. 5516.02(C) and R.C. 5516.06(C) permit the erection and maintenance of an advertisement promoting the consumption of beef or pork on property where cows or pigs are bred or fattened.

Your second question addresses a similar issue, whether an advertisement promoting agriculture which is located on property where agricultural goods are produced falls within R.C. 5516.02(C) or R.C. 5516.06(C). R.C. 5516.02(C) provides that advertising devices which indicate the name of the "business or profession" conducted on the property are also excluded from the general prohibition against advertising devices being located within six hundred sixty feet of the right-of-way of an interstate highway. R.C. 5516.06(C) contains a similar exception for advertising devices along primary state highways. R.C. 5516.06(C) differs from R.C.

5516.02(C) only in that it also permits advertising devices which indicate the name of "activities" conducted on the property.

The view that agriculture is a business has been accepted by Ohio courts. In State ex rel. Board of County Commissioners v. Monq, 12 Ohio St. 3d 66, 465 N.E.2d 428 (1984), the Ohio Supreme Court held that farming is "industry" and "commerce," and therefore is within the purview of Ohio Const. art. VIII, §13. Thus, the board of county commissioners was found to have the authority to issue industrial development bonds for the expansion of a hay farming operation. Similarly, in 1983 Op. Att'y Gen. No. 83-095, I addressed the issue whether agriculture constitutes "commerce" under Ohio Const. art. VIII, §4. In concluding that agriculture is a form of commerce, I noted that the modern farmer is the "manager of a highly technological, capital intensive business." Id. at 2-364. Further, in Ohio Grain Company v. Swisshelm, 40 Ohio App. 2d 203, 318 N.E.2d 428 (Green County 1973), the court addressed the issue whether a farmer was a "merchant" under R.C. 1302.10, and, therefore, bound by additional terms stated in a written confirmation sent by a grain buyer to the farmer.⁴ In holding that the buyer was bound by the additional terms, the court stated, "[defendant's counsel] would represent defendant as a simple tiller of the soil, unaccustomed to the affairs of business and the marketplace. Farming is no longer confined to simple labor. Only an agribusinessman may hope to survive." 40 Ohio App. 2d at 206, 318 N.E.2d at 403.

Although these authorities are not directly applicable in this instance, they aptly demonstrate the modern trend toward recognizing that agriculture is a business. Thus, I conclude that a billboard which promotes agriculture is an advertising device which indicates the name of the business conducted on the property under R.C. 5516.02(C) and R.C. 5516.06(C).⁵

Therefore, it is my opinion, and you are advised that:

1. An advertising device which promotes the consumption of beef or pork products and is

⁴ R.C. 1302.10(B) states, inter alia, that additional terms contained in a written confirmation become part of a contract "between merchants" unless notification of objection to the additional terms is given within a reasonable time after notice of them has been received. R.C. 1302.01(A)(7) states that "[b]etween merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants." R.C. 1302.01(A)(5) defines "merchant" as "a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill."

⁵ Because I have determined that agriculture is a business for purposes of R.C. 5516.02 and R.C. 5516.06, it is unnecessary for me to determine whether agriculture is also an "activity" under R.C. 5516.06. However, again

located on property where such animals are bred or fattened for market, is an advertising device which identifies the goods produced or sold on such property under R.C. 5516.02(C) and R.C. 5516.06(C).

2. An advertising device which promotes agriculture and is located on property where agricultural goods are produced, is an advertising device which indicates the name of the business conducted on such property under R.C. 5516.02(C) and R.C. 5516.06(C).

applying the general rule of statutory construction that words should be accorded their usual and literal meaning, it would appear that agriculture would also constitute an "activity." An activity is defined as "any specific action or pursuit." Webster's New World Dictionary 14 (2d college ed. 1982). Agriculture, as well as being a business, is also the "work of cultivating the soil, producing crops and raising livestock." Id. at 27. Since each of these is an "action or pursuit," agriculture would also fall within the definition of an "activity."