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1. PACKAGE OR CONTAINER—DIRECTOR OF AGRICULTURE—MAY REQUIRE MANUFACTURERS OF PRODUCTS UNDER HIS JURISDICTION TO LABEL PACKAGE OR CONTAINER WITH MANUFACTURER'S NAME AND ADDRESS AS IT APPEARS ON LICENSE ISSUED TO MANUFACTURER—SECTION 1177-12 G. C.
2. MILK—SOLD—NOT PRODUCED AND PROCESSED TO MEET REQUIREMENTS OF UNITED STATES PUBLIC HEALTH GRADE CODE—VIOLATION, SECTION 12728 G. C.—WHEN MILK CONTAINER BEARS LABEL PURPORTING TO MEET REQUIREMENTS.
3. DIRECTOR MAY REQUIRE NAME AND ADDRESS OF MANUFACTURER TO APPEAR ON FROZEN DESSERT CONTAINERS.
4. REGULATION 42 (j) IS VALID—REQUIREMENT, MINIMUM BUTTERFAT CONTENT 6% FOR IMITATION ICE CREAM.

## SYLLABUS:

1. The Director of Agriculture may under Section 1177-12, General Code, require the manufacturers of products under his jurisdiction to label a package or container with the name and address of such manufacturer as it appears on the license issued to said manufacturer.

2. Whoever sells milk not produced and processed to meet the requirements of the United States Public Health Grade A Code, violates the provisions of Section 12728, General Code, when such milk container bears a label purporting to meet these requirements.

2. The Director of Agriculture may require the name and address of the manufacturer to appear on frozen dessert containers.

4. Regulation 42 (j) of the Department of Agriculture, requiring a minimum butterfat content of 6% for imitation ice cream is a valid regulation.

Columbus, Ohio, March 8, 1950

Hon. H. S. Foust, Director, Department of Agriculture  
Columbus, Ohio

Dear Sir :

Your request for my opinion is as follows :

"In accordance with the provisions of Section 1177-12 of the General Code of Ohio the Director of Agriculture has promulgated regulations with respect to the labeling of containers or packages containing food products. Specifically, Regulation 1 (a) provides :

'Where the Ohio law requires a license to manufacture such product and where the name and address of such manufacturer appears on the body of the package or container or paper label thereon, then such name and address of such manufacturer must be the same as that which appears on the license.'

Although no official copy of the ruling can be found in the Director's files or records of rulings and interpretations, Attorney General Jenkins is supposed to have ruled that

'Where there is a company operating branches in Ohio, and purchasing licenses for each branch, it may designate for all branches by establishing a general office in Ohio which makes the general office responsible for illegal operation of any branch in the state. No general office can be established or stand good for any branch if outside the state.'

The following questions are now pertinent to the enforcement of these regulations and interpretations :

1. If a company designates one of its Ohio offices as the general office responsible for illegal operation of any branch in the state, does that relieve that company of labeling responsibilities under Regulation 1 (a), which provides that the name and address of the company manufacturing the product as contained on the license shall appear on the container?
2. Under the assumption that the company accepts the general office responsibility, does the Director have the authority to decide that packaged products must be identified with the actual place of manufacture by requiring the name of the city in which manufactured on the container?

3. In this ruling by Attorney General Jenkins, he is supposed to have interpreted further that 'No general office can be established or stand good for any branch if outside the state.' Please indicate whether this interpretation means that (a) no general office can be held responsible for any branch if the general office is outside the state, or (b) if the general office is established in the state, can it be held responsible for products sold in the state by a branch located outside the state?
4. Do the provisions of Regulation 1 (a) as promulgated under Section 1177-12 of the General Code, have the effect of superseding any of the provisions of Sections 12730-1 to 12730-4 (frozen dessert laws)?
5. May dairy products not produced and processed to meet the requirements of the U. S. Public Health Grade A Code be considered to be misbranded under Section 12728 of the General Code, if such products carry the Grade A label purporting to meet those requirements?
6. In consideration of Section 12728 (in connection with Grade A misbranding) and Section 12730-1 (b) (pasteurized mixtures in frozen desserts), is it within the province of the Director of Agriculture to require the name and address of the manufacturer on frozen dessert containers, specifically for identification purposes in the interest of public health?
7. Does Regulation 42 (j), which establishes a minimum butterfat content of 6% for imitation ice cream, have the effect of superseding Section 12730-1 (7), definition for imitation ice cream?"

I have made a search of the opinions rendered by Attorney General Jenkins during his tenure of office and have been unable to find the opinion to which you refer. I question the fact that any such opinion was rendered, but if such a ruling was made, I feel myself in disagreement with it. While a corporation may delegate certain authority to its agents, it can never delegate its responsibility for its agent's acts. A corporation in such an instance is like a natural person, and I know of no principle of law which would permit a principal to disclaim any illegal operation of his agent especially if the agent were operating pursuant to the instruction of the principal.

Section 1177-12, General Code, authorizes the Director of Agriculture to make such rules and regulations as may be necessary for the

enforcement of the food, drug, dairy and sanitary laws of this state. In pursuance of this authority the Director has made Regulation 1 (a) quoted in your letter.

The Director having the power to make the regulation in question, there must be compliance on the part of the manufacturers to which it applies. The regulation states specifically that the name of the manufacturer on the body of the package must be the same as the name which appears on the license, and the fact that a company designated one of its Ohio offices as the general office responsible for illegal operation, would not relieve the company from responsibility under Regulation 1 (a). The Director has determined by his regulations that the packaged product must be identified with the licensee, and such determination being according to law, he may enforce such regulation.

In view of the above, I find it unnecessary to answer your first three questions.

Your fourth question is as follows:

“Do the provisions of Regulation 1 (a), as promulgated under Section 1177-12 of the General Code, have the effect of superseding any of the provisions of Sections 12730-1 to 12730-4 (frozen dessert laws?)”

Section 12730-1, General Code, contains definitions of words used in Sections 12730-1 to 12730-1d, inclusive, the frozen desserts law. Section 12730-1 (a) requires any person who sells, advertises or offers or exposes for sale any frozen dessert manufactured in this State, to obtain a license. Other provisions in said section relate to signs and various license requirements. Section 12730-1 (b) relates to products required to be used in frozen desserts. Section 12730-1 (c) relates to labeling and storage of frozen desserts. Section 12730-1 (d) is the penalty clause for violation of the above sections. Section 12730-4, General Code, relates to the suspension of licenses by the Director of Agriculture for violations of said sections.

Regulation 1 (a) does not supersede any of the provisions of Sections 12730-1 to 12730-4. The Regulation was adopted to supplement said sections and to aid the Director in enforcing said laws under Section 12730-4, General Code.

Your fifth question is as follows:

“May dairy products not produced and processed to meet the requirements of the U. S. Public Health Grade A Code be considered to be misbranded under Section 12728 of the General Code, if such products carry the Grade A label purporting to meet those requirements?”

Section 12728, General Code, reads as follows:

“Whoever sells, exchanges, exposes, offers for sale or exchange, has in his possession or disposes of milk which is falsely branded, labeled, marked or represented as to grade, quantity or place where produced or procured, shall be fined not less than fifty dollars nor more than two hundred dollars, and for each subsequent offense shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days.”

By “dairy products” I presume you mean milk, since Section 12728, supra, refers only to milk. If such milk carries the Grade A label of the United States Public Health Grade A Code, where in fact such milk was not produced and processed in accordance with the standards set up by such code, it is my opinion that such milk is falsely represented as to grade and such procedure constitutes a violation of Section 12728, General Code.

Your sixth question is as follows:

“In consideration of Section 12728 (in connection with Grade A misbranding) and Section 12730-1b (pasteurized mixtures in frozen desserts), is it within the province of the Director of Agriculture to require the name and address of the manufacturer on frozen dessert containers, specifically for identification purposes in the interest of public health?”

Section 12730-1 (c), General Code, specifically answers this question. That section reads in part, as follows:

“(1) No person shall sell or offer or expose for sale frozen desserts in any container which is labeled with the name of a person other than the manufacturer of such frozen deserts. \* \* \*”

Under Section 1177-12, General Code, the Director of Agriculture could also require that the name and address of the manufacturer be placed on the container.

Your seventh question reads as follows:

“Does Regulation 42 (j), which establishes a minimum butterfat content of 6% for imitation ice cream, have the effect of superseding Section 12730-1 (7), definition for imitation ice cream?”

Regulation 42 (j) reads as follows:

“ ‘Imitation Ice Cream’ means any frozen substance, mixture or compound regardless of name under which it is represented, which is made in imitation or semblance of ice cream, or is prepared or frozen as ice cream is customarily prepared or frozen and which is not ice cream, frozen custard, milk sherbet, ice or ice sherbet, and it shall contain not less than 6% butterfat, and not less than 16% total milk solids.”

The definition contained in both the regulation and the statute is the same. Thus, Section 12730-1, General Code, reads in part, as follows:

“ ‘Imitation ice cream’ means any frozen substance, mixture, or compound, regardless of the name under which it is represented, which is made in imitation or semblance of ice cream, or is prepared or frozen as ice cream is customarily prepared or frozen, and which is not ice cream, frozen custard, milk sherbet, ice or ice sherbet as defined in this act.”

Regulation 42 (j) does not change the definition, but merely prescribes the amount of butterfat and milk solids necessary. The Director has the power to prescribe the standard under Section 1177-12.

In summary and conclusion, it is my opinion that:

1. The Director of Agriculture may under Section 1177-12, General Code, require the manufacturers of products under his jurisdiction to label a package or container with the name and address of such manufacturer as it appears on the license issued to said manufacturer.

2. Whoever sells milk not produced and processed to meet the requirements of the United States Public Health Grade A Code, violates the provisions of Section 12728, General Code, when such milk container bears a label purporting to meet these requirements.

3. The Director of Agriculture may require the name and address of the manufacturer to appear on frozen dessert containers.

4. Regulation 42 (j) of the Department of Agriculture, requiring a minimum butterfat content of 6% for imitation ice cream is a valid regulation.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.