

1303

AGRICULTURE, DEPARTMENT OF:

1. REQUIRED BY STATUTE TO PROSECUTE PERSON, FIRM OR CORPORATION ENGAGED IN MANUFACTURE OR SALE OF ADULTERATED DRUG OR ARTICLE OF FOOD OR DRINK—ALSO REQUIRED TO ENFORCE ALL LAWS AGAINST FRAUD, ADULTERATION OR IMPURITIES IN FOOD, DRINK, DRUGS AND UNLAWFUL LABELING.
2. POWERS AND DUTIES AS TO HOTEL, RESTAURANT OR OTHER EATING ESTABLISHMENT—OPERATED IN UNCLEAN AND UNSANITARY CONDITION—NOTIFICATION TO PROPRIETOR, OWNER OR MANAGER.
3. NO LEGAL DUTY TO REGULATE HEALTH OR PHYSICAL CONDITIONS OF OPERATORS OF FOOD ESTABLISHMENTS OR HANDLERS OF FOOD PRODUCTS IN HOTELS, RESTAURANTS OR OTHER EATING ESTABLISHMENTS.

SYLLABUS:

1. The department of agriculture is required by statute to prosecute or cause to be prosecuted each person, firm or corporation engaged in the manufacture or sale of an adulterated drug or article of food or drink. Said department is also required to enforce all laws against fraud, adulteration or impurities in food, drink, drugs and unlawful labeling.
2. The powers and duties of the department of agriculture or of its inspectors as to a hotel, restaurant or other eating establishment being operated in an unclean and unsanitary condition extend only to notification to the proprietor, owner or manager thereof to place such establishment in a clean and sanitary condition.
3. There is no duty enjoined by law requiring the department of agriculture or its agents to perform any functions relative to the health or physical conditions of operators of food establishments or handlers of food products in hotels, restaurants and other eating establishments.

Columbus, Ohio, October 29, 1946

Honorable John M. Hodson, Director of Agriculture
Columbus, Ohio

Dear Sir:

Your request for my opinion reads:

"The question has been raised, which challanges the authority of the Department of Agriculture, or its agents, to exercise any authority over hotels, restaurants or other eating establishments, wherever operating within the state.

Therefore, we respectfully request an official opinion from your office as to whether the law permits the Department of Agriculture, or its authorized agents, to perform any functions relative to sanitation, health of operators, or quality of foods handled by such hotels, restaurants or eating places in Ohio."

Your inquiry consists of three parts, and consideration will first be given to that part relative to quality of foods sold by hotels, restaurants and other eating places.

Section 1177-12, General Code, reads as follows:

"The secretary of agriculture shall establish standards of quality, purity and strength for foods, when such standards are not otherwise established by any law of this state. Such standards shall conform to the standards for foods adopted by the United States department of agriculture. The secretary of agriculture shall make such uniform rules and regulations as may be necessary for the enforcement of the food, drug, dairy and sanitary laws of this state. Such rules and regulations shall, where applicable, conform to and be the same as the rules and regulations adopted from time to time for the enforcement of the act of congress, approved June 30, 1906, and amended March 3, 1913, and known as the 'food and drug act.'

The secretary of agriculture shall inspect drugs, butter, cheese, lard, syrup and other articles of food or drink, made or offered for sale in the state and prosecute or cause to be prosecuted each person, firm or corporation engaged in the manufacture or sale of an adulterated drug or article of food or drink, in violation of law, and shall enforce all laws against fraud, adulteration or impurities in foods, drinks, or drugs, and unlawful labeling within the state."

All such powers and duties as were theretofore vested in the secretary of agriculture, were transferred to and vested in the department of agriculture by the provisions of Section 154-42, General Code (113 v. 551).

Therefore, under the provisions of Section 1177-12, quoted above, there is placed upon the director of agriculture the duty to "inspect butter, cheese, lard, syrup and other articles of food or drink, made or offered for sale in the state and prosecute or cause to be prosecuted each person, firm or corporation engaged in the manufacture or sale of an adulterated drug or article of food or drink, in violation of law," and also the duty to enforce all laws against fraud, adulteration or impurities in foods, drinks, or drugs.

While the section last mentioned does not enumerate the establishments over which the department of agriculture has jurisdiction respecting the quality of foods handled and sold, such enumeration is in no way material to the question, because the duties enjoined upon the director of agriculture relate to the articles of food and drink "made or offered for sale."

Therefore, you are advised that in my opinion the department of agriculture is required by Section 1177-12, General Code, to inspect articles of food or drink made or offered for sale by hotels, restaurants and eating establishments, and to prosecute or cause to be prosecuted any person, firm or corporation engaged in the manufacture or sale of an adulterated article of food or drink, in violation of law. Said department is also required to enforce all laws against fraud, adulteration or impurities in food, drink, drugs and unlawful labeling.

Consideration will next be given to that part of your inquiry respecting your authority and duty as to sanitation of hotels, restaurants and eating places.

Respecting this matter of sanitation, I find Section 12797, General Code, which reads as follows:

"Whoever, being the proprietor, owner or manager of a bakery, confectionery, creamery, dairy, dairy barn, milk depot, laboratory, hotel, restaurant, eating house, packing house, slaughter house, ice cream factory, canning factory or place where a food product is manufactured, packed, stored, deposited,

collected, prepared, produced or sold for any purpose, fails to place it in a clean and sanitary condition within ten days after being duly notified in writing or by posting the notice provided for in the next succeeding section, or fails to keep it in such condition thereafter, 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 three hundred dollars or imprisoned in the county jail not less than thirty days nor more than one hundred days, or both."

The section just quoted appears in the penal code under the chapter describing punishable offenses against public health; and "the next succeeding section" referred to therein is Section 12798, General Code, which makes it the duty of the department of agriculture or its inspectors, if of the opinion that a place named in Section 12797 is being operated in violation of such section, to notify the proprietor, owner or manager thereof, in writing, to place it in a clean and sanitary condition within a reasonable time to be stated in such notice, which time shall not be less than ten days.

Lest there be some confusion respecting the statutes, I direct your attention to the fact that Pages Ohio General Code contains two sections numbered 12798. This occurred by reason of the fact that former Section 12798 was amended by House Bill No. 115, 107 O. L. 460, and was also amended by House Bill 442, 107 O. L. 505, both of which were passed on the same date, approved by the Governor on the same date, and filed in the office of the Secretary of State on the same date. Because of the doubt as to which amendment is in force both amendments are given by the codifier. However, that section numbered 12798 which follows the section of the same number mentioned as authorizing a notification in writing to place an establishment in a clean and sanitary condition, relates only to the duty of the inspectors of the department of agriculture to post in a conspicuous place a copy of the sanitary code adopted by the department of agriculture, and has no particular bearing upon your inquiry. Presumably the sanitary code mentioned in that section has reference to the authority of the department of agriculture granted under Section 1177-12, supra, to make such uniform rules and regulations as are necessary for the enforcement of the food, drug, dairy and sanitary laws of this state.

The duty enjoined upon the department of agriculture and its inspectors to give notice in writing to the proprietor, owner or manager of an establishment to place it in a clean and sanitary condition as provided in Section 12798, General Code, is the source and extent of the authority of your department in that respect. There appears to be no statute authorizing or directing your department or its inspectors to proceed further with the enforcement of such sections. Had the legislative body intended that such statutes be enforced by the department of agriculture and its inspectors, apt language to express such intention was certainly available. For example, Section 12794, General Code, states that "the secretary of agriculture shall enforce the provisions of the next four preceding sections." Of course that language does not enjoin upon the department of agriculture an enforcement of Section 12797, General Code, but is referred to only as illustrative of language available to the law makers.

Therefore, in answer to that part of your inquiry relative to sanitation, you are informed that in my opinion it is the duty of the department of agriculture and its inspectors to notify in writing the proprietor, owner or manager of any hotel, restaurant or other eating establishment, if of the opinion that such place is being operated in an unclean and unsanitary condition, and to state in such notice a reasonable time in which to place it in a clean and sanitary condition.

Respecting that part of your inquiry concerning what you have designated "health of operators," this will advise you that I find no provisions of law which enjoin upon the department of agriculture or its authorized agents the duty to perform any functions or duties relative to the health or physical conditions of operators of food establishments or handlers of food products. Neither do I find that such authority is delegated by fair implication; and since the department of agriculture has only such powers as are specifically delegated to it by the legislature of this state, and such additional powers as must be implied in order to give effect to those expressly delegated, you are advised that in my opinion the department of agriculture has no jurisdiction respecting such matter.

Respectfully,

HUGH S. JENKINS
Attorney General