

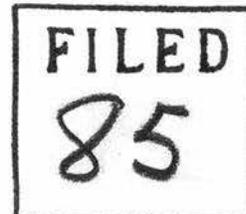
AGRICULTURE:  
DAIRY PRODUCTS:

A regulation requiring vehicles transporting milk to be covered and insulated is not compatible with paragraph 3 of Section 196.585, RSMo 1949.

March 26, 1951

3-27-51

Honorable Joseph T. Stakes  
Director of Dairy Division  
Department of Agriculture  
State of Missouri  
Jefferson City, Missouri



Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your opinion request:

"An opinion is requested as to whether the Commissioner of Agriculture--empowered with the authorization for promulgating regulations--in accordance with Section 196.555 RSMo 1949--could prescribe a regulation under Section 196.585 RSMo 1949, Paragraph 3, requiring vehicles transporting milk to be covered and insulated.

"Section 196.585 RSMo 1949, Paragraph 3, requires that all vehicles used for the transportation of dairy products must be clean and sanitary. Many dairy products manufacturing plants engaged in the procurement of milk from farm to market require Route Haulers to equip their trucks with covered and insulated beds.

"It is felt that open trucks are conducive to extraneous matter getting into the milk and, also, open trucks are used to haul feed, fertilizers, and other items back on the milk route.

"It has been the observation of this Division during the past several years that plants which require covered vehicles show

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the lowest percentage of rejectionable milk, based on sediment or extraneous matter content.

"It is further believed that the dairy farmers who produce milk for manufacturing purposes are deserving of such protection of their milk from farm to market, and that the protection from road dust can best be provided with covered vehicles."

Section 196.555, RSMo 1949, states:

"The commissioner is hereby authorized, after investigation and public hearing, to prescribe and promulgate such reasonable regulations, not contrary to the purposes of sections 196.520 to 196.690, as are necessary to carry out the intent or to enforce said sections."

Section 196.585, RSMo 1949, Paragraph 3, states:

"All milk and cream cans shall be thoroughly washed, sterilized, and free from rust before being used for milk or cream, and shall be thoroughly dry before lids are affixed and empty cans shipped. All vehicles used for the transportation of dairy products must be clean and sanitary. Whenever dairy products are transported in the same vehicle with livestock, poultry, hides, furs or any other article of similar nature, or any product or thing likely to contaminate or injure the quality of said dairy products, said dairy products must be either separated from the other articles by a solid partition or a heavy water-proof canvas, or loaded and carried apart and above such other contaminating article or thing. Milk and cream, while being transported, either by the producer or the purchaser, shall be protected by wet sacks, tarpaulins, blankets, or by such other means as will keep said product in a reasonably cool condition."

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The question which you propound is whether, under the authority given to the Commissioner of Agriculture by Section 196.555, supra, to promulgate regulations, he could, legally, in view of Paragraph 3 of Section 196.585, supra, promulgate a regulation requiring vehicles transporting milk to be covered and insulated.

A sentence by sentence analysis of Paragraph 3 of Section 196.585, supra, leads us to conclude that the Commissioner would not be authorized, by anything contained in the aforesaid portion of the aforesaid section, to promulgate the proposed regulation. The first sentence of Paragraph 3 relates wholly to the condition of the milk and cream containers. The next sentence states that "All vehicles used for transporting of dairy products must be clean and sanitary." This would appear to give the Commissioner wide latitude, but the sentence following contemplates, and allows, under certain specified physical conditions, the transportation in a vehicle transporting dairy products, the simultaneous transportation of live-stock, poultry, hides, furs, and other articles of a similar nature. If the law allows this, as it does, it obviously believes that the simultaneous transportation of the above listed, and similar, articles, in a vehicle transporting dairy products, will not, under the physical conditions prescribed, prove harmful to the dairy products. It would appear that for the dairy products to be in an open, un-insulated vehicle, would be less harmful than would the presence of the articles mentioned, and that, therefore, such truck coverage and insulation as is proposed by the regulation proposed would be outside the contemplation of Paragraph 3 of Section 196.585, supra. The final sentence of Paragraph 3 refers only to the immediate conditions surrounding the containers of milk and cream during transportation.

#### CONCLUSION

A regulation requiring vehicles transporting milk to be covered and insulated is not compatible with Paragraph 3 of Section 196.585, RSMo 1949.

Respectfully submitted,

HUGH P. WILLIAMSON  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

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