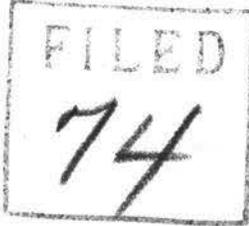


AGRICULTURE: ) Missouri State Penitentiary is not re-  
MO. STATE PENITENTIARY: ) quired to cook the garbage fed to swine  
ANIMALS: ) owned by the state and fed on the state  
penitentiary farms under House Bill No.  
60 of the Sixty-seventh General Assembly.



June 19, 1953

Missouri State Penitentiary  
Jefferson City, Missouri

Attention: Paul V. Renz, Superintendent of Farms

Dear Sir:

We render herewith our opinion based on your request of  
May 15, 1953, which request reads as follows:

"We are wondering if the new 'garbage  
cooking' law will affect us here at  
the prison. Our garbage is taken from  
the kitchens each day and fed directly  
to the hogs. We use all the meat here.  
Will you please give us a ruling as to  
whether we should cook this garbage or  
not?"

The pertinent portion of the law to which you refer,  
House Bill No. 60 of the Sixty-seventh General Assembly,  
reads as follows:

"Section 1-A. Prior to the feeding  
of garbage, other than garbage obtained  
from his own household, to any swine  
located in the State of Missouri, the  
owner or feeder, as the case may be,  
shall first obtain an annual permit  
from the Department of Agriculture  
of Missouri, for which he shall pay  
an annual fee of Twenty-five dollars,  
which shall be deposited in the  
'Agriculture Fees' fund and to be

Missouri State Penitentiary

used for the enforcement of this act.

"The applicant for a garbage feeding permit shall certify in an application that he has facilities for cooking garbage. The Commissioner of Agriculture, or his deputy, upon receipt of an application for a permit, shall promptly make an investigation, and if the facilities are adequate for the cooking of garbage, shall issue a permit.

"Section 2. No person, other than an individual who feeds to his own swine only the garbage obtained from his own household, shall feed garbage to swine unless such garbage has been heated to a temperature of 212 degrees Fahrenheit (boiling point) and fed in compliance with rules and regulations promulgated by and under permits issued by the state department of agriculture.

"Section 7. The feeding of raw garbage to swine has resulted in an epidemic of vesicular exanthema, a serious disease of hogs, which prevents the sale of such hogs in interstate commerce, and thereby causes severe losses to the people of this state and endangers the public health. This act, therefore, is necessary for the immediate preservation of the public peace, health and safety and an emergency exists within the meaning of the constitution. This act shall, therefore, be in full force and effect from and after July 1, 1953."

We call your attention to the following rule of statutory construction found in 59 C.J., Statutes, Section 653, at page 1103:

"The state and its agencies are not to be considered as within the purview of a statute, however general and comprehensive the language of such act may be, unless an intention to include them is clearly manifest, as where they are expressly named therein, or included by necessary implication. \* \* \*"

## Missouri State Penitentiary

This rule is especially applicable in construing a penal statute such as the garbage cooking law quoted above, and hence state agencies, such as the State Penitentiary, are not within the purview of the act.

However, we believe there is a strong moral obligation on the state agencies to institute and follow the garbage cooking practice. The disease of vesicular exanthema is a highly contagious and destructive one. Its outbreak in one herd of swine constitutes a menace to the surrounding area, and could well set at naught the precautions taken to prevent the disease. We respectfully suggest that the officials of the State Penitentiary, in cooperation with the Department of Agriculture, voluntarily institute and follow the practice of cooking garbage before feeding it to swine.

### CONCLUSION

It is the opinion of this office that the Missouri State Penitentiary, although under a moral obligation to do so, is not legally required to cook the garbage fed to swine owned by the state and fed on the state penitentiary farms under House Bill No. 60 of the Sixty-seventh General Assembly.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, W. Don Kennedy.

Yours very truly,

JOHN M. DALTON  
Attorney General

WDK:lw