



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

April 4, 1958

Dr. Henry A. Holle
Department of Health
Austin, Texas

Opinion No. WW-408

RE: Does the definition of milk, as provided in Section 1(A) of Article 165-3, permit the use of any other term, such as "All Jersey Milk", "All Guernsey Milk" etc., to designate the product, or should milk, regardless of breed source, be labeled simply "Milk" under a uniform designation of the food product?

Dear Dr. Holle:

In a recent letter to this department you have stated that a group of milk producers has requested approval by your department of a label which contains the words "All Jersey Milk." These milk producers intend to use this label on a milk carton containing their product, if such approval by your department is granted. In connection with their request, you have asked us the following question:

"Does the definition of milk as provided in Section 1(A) of Article 165-3 permit the use of any other term such as "All Jersey Milk", "All Guernsey Milk", "All Holstein Milk", "Hereford Milk", etc. to designate the product, or should milk regardless of breed source be labeled simply, "Milk" under a uniform designation of the food product?"

The restrictions on labeling are contained in Section 4 of Article 165-3 which reads as follows:

"No milk or milk products sold, produced or offered for sale within this state by any person, firm, association or corporation shall carry a label, device or design marked 'Grade A' or 'Grade B', or any other grade, statement, design or device, regarding the safety, sanitary quality or food value of the contents of the container which is misleading or which does not conform to the definition and requirements of this Act."

"Dr. Henry A. Holle, page 2 (WW-408)."

These restrictions pertain to labels which are concerned with the "safety, sanitary quality or food value" of the product. This type of label must neither be "misleading" nor not in conformance with the definitions and requirements of this act.

In Opinion No. V-1095 dated August 22, 1950, addressed to the State Health Officer, Attorney General Price Daniel held that the addition of the word "fresh" to a label for Grade A, pasteurized, homogenized, Vitamin D milk was not prohibited by Section 4 of Article 165-3, V.C.S., because the term "fresh" does not refer to the safety, sanitary quality or food value of the milk. It is our opinion that neither does the term "All Jersey" refer to the safety, sanitary quality or food value of the milk.

It is obvious that the words "All Jersey" are not misleading within the prohibition of the statute as they in no way describe the safety, sanitary quality or food value of the milk.

To determine compliance with the second prohibition of Section 4 we must look to the definition of "Milk" which is contained in Section 1(A) as follows:

"Milk is hereby defined to be the lacteal secretion obtained by the complete milking of one or more healthy cows, excluding that obtained within fifteen days before and five days after calving, or such longer period as may be necessary to render the milk practically colostrum free; which contains not less than eight per cent (8%) of milk solids-not-fat, and not less than three and one-fourth percent (3-1/4th%) of milk fat."

There is nothing in this definition which prohibits the use of some term to designate the breed source and the use of such term would be allowed.

It has been stated that it is impossible to determine by laboratory analysis the breed source of standardized milk. While this does complicate the enforcement of the mislabeling laws, this does not of itself prohibit the use of the words "All Jersey Milk". This fact merely requires the use of techniques other than laboratory analysis to determine the correctness of the breed source label.

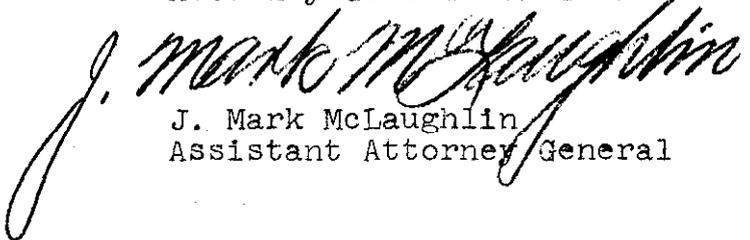
"Dr. Henry A. Holle, page 3 (WW-408)."

SUMMARY

The use of the designation "All Jersey Milk" on milk cartons containing such milk is not prohibited by Section 4 or Section 1(A) of Article 165-3 of Vernon's Civil Statutes.

Very truly yours,

WILL WILSON
Attorney General of Texas



J. Mark McLaughlin
Assistant Attorney General

JMMc:dac:mc

APPROVED:

OPINION COMMITTEE:

Geo. P. Blackburn, Chairman

Cecil C. Rotsch

Milton Richardson

John H. Minton, Jr.

REVIEWED FOR THE ATTORNEY GENERAL

BY: W. V. Geppert