



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL

ATTORNEY GENERAL

August 22, 1950

Hon. Geo. W. Cox, M.D.
State Health Officer
Department of Health
Austin, Texas

Opinion No. V-1095.

Re: The legality of market-
ing milk in Texas under
a label bearing the word
"fresh."

Dear Sir:

Reference is made to your recent request which reads in part as follows:

"Does Article 165-3, Section 4, Revised Civil Statutes, Texas 1937 Supplement prohibit the use of the word 'fresh' so placed on a label for grade A pasteurized homogenized vitamin D milk that it would likely be interpreted as referring to the safety, sanitary quality or food value of the contents of a container so labeled?"

Section 4 of Article 165-3, V.C.S., provides in part:

"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 definitions and requirements of this Act." (Underscoring ours.)

Black's Law Dictionary (3rd Ed. 1933) defines the word "fresh" as "immediate, recent, following without any material interval." Webster's International Dictionary (2nd Ed. 1938) defines "fresh" as "having its original qualities unimpaired."

In City of Louisville v. Ewing Vol-Allmen Dairy Co., 105 S.W.2d 801, 802 (Ky. Ct. of App. 1937), the

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court stated:

"However, when the process (pasteurization) is complete, we have nothing left but milk, the same article and raw material that comes fresh from a healthy cow by the hands of a careful and clean milker, after it had been properly strained and prepared for use by a first-class, clean and tidy housewife. The milk, after the pasteurization is complete, contains the same ingredients as it had in it when it came from the cow. It is only made clean food to be used. It has lost none of its palatable taste as when it came from a healthy cow. Still, it contains all of the ingredients that it formerly had."

The above case was cited in Rieck-McJunkin Dairy Co. v. School Dist. of Pittsburgh, 66 A.2d 295, 299 (Pa. Sup. 1949), and there the court stated:

"Homogenization breaks up globules of fat to prevent separation of cream from milk and results in uniform distribution of the fat content of the milk. . . . While some of the attributes of milk are changed by the process it is not manufacturing into a new and different article. It also continues to be sold as milk. Pasteurized and homogenized vitamin D milk and pasteurized chocolate milk is milk with the addition, in one instance, of vitamin D concentrate and, in the other, of chocolate and sugar. . . . These products are sold as milk; the changes are essentially in the milk flavor, they are still used as beverages and are not new and different products in the sense of the definition of manufacture."

In view of the above definitions and interpretations, it is the opinion of this office that the use of the word "fresh," under the circumstances, is not misleading within the meaning of the statute, since it does not apply to and is not descriptive of either the safety, sanitary quality or food value of the contents of the container.

SUMMARY

Section 4 of Article 165-3 of Vernon's Civil Statutes does not prohibit the use of the word "fresh" on labels of Grade A pasteurized homogenized vitamin D milk, since this term does not refer to either the safety, sanitary quality, or food value of the contents of the containers so labeled.

APPROVED:

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Yours very truly,

PRICE DANIEL
Attorney General

By  Lee Thomas
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