

Warren Chisum
STATE REPRESENTATIVE

COMMITTEES:
Appropriations, Chair
Energy Resources



Austin Office:
P.O. Box 2910
Austin, Texas 78768-2910
(512) 463-0736

District Office:
P.O. Box 2061
Pampa, Texas 79066-2061
(806) 665-3552

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House of Representatives

SEP 17 2007

OPINION COMMITTEE

September 13, 2007

The Hon. Greg Abbott
Attorney General of the State of Texas
Office of the Attorney General
300 W. 15th Street
Austin, TX 78701

FILE # ML-45359-07
I.D. # 45359

RQ-0623-GA

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Dear Attorney General Abbott:

Pursuant to Article 22, Section IV of the Texas Constitution and to Texas Government Code Section 402.042(b), I write to respectfully request your opinion on an issue involving the application of Texas law. This letter presents the question of whether a foreign corporation may transport horsemeat for human consumption in-bond through Texas for immediate export to foreign destinations.

FACTS

Texas Agriculture Code Chapter 149 criminalizes the sale, exhibit for sale, transfer, or possession of horsemeat for the purpose of human consumption. See TEX. AGRIC. CODE ANN. § 149.001-.007 (Vernon 2004) ("Chapter 149"). There is no federal law against the consumption, sale or transport of horsemeat for human consumption or otherwise. Nor does Texas law forbid the slaughter, sale or transport of horsemeat for purposes other than human consumption (e.g., it is not illegal to sell horsemeat as animal feed in Texas).

Foreign corporations operate horse slaughterhouses that process horsemeat for human consumption. This horsemeat is not sold or distributed in Texas, or elsewhere in the United States. All of the horsemeat that these foreign corporations process is sold in other foreign nations, particularly in Europe. Horsemeat is legal (including for human consumption) in these foreign nations.

The foreign horsemeat destined for the foreign nations such as Europe travels through the U.S. "in-bond," meaning that the product is merely passing through U.S. territory prior to immediate export, and thus, no customs, duties, or import taxes are assessed upon it. See 19 U.S.C. § 1553 (establishing in-bond entry for transportation and exportation); 19 C.F.R. § 18.10 (defining different forms of in-bond entry). The in-bond transport of goods is a legal designation to aid the flow of international commerce. The goods are deemed not to be present -

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District 88: Armstrong, Bailey, Briscoe, Castro, Childress, Collingsworth,
Donley, Gray, Hall, Hansford, Hemphill, Hutchinson, Lamb,
Lipscomb, Ochiltree, Parmer, Roberts, Swisher, Wheeler

- and thus are not taxed or dutied -- in the country that they are passing through on their way to a final destination. The in-bond transportation of goods through United States territory is governed by federal law and regulations. Id.

Notably, if these foreign corporations use Texas to transport the horsemeat in-bond, the slaughter and packaging would not be conducted in Texas, the horsemeat would not be offered or exhibited for sale in Texas, and the horsemeat would not be consumed by humans in Texas. Thus, the foreign horsemeat would never be legally present in Texas for the purpose of taxation or customs duties. Rather, its physical presence in Texas would be merely temporary for the sole purpose of export.

QUESTION PRESENTED

Against this factual backdrop, the question presented for your consideration is as follows: Whether Chapter 149 applies to a foreign corporation that transports horsemeat for human consumption in-bond through Texas for immediate export to foreign destinations. Apart from Chapter 149, there are federal laws authorizing the in-bond transit of foreign goods through the United States. In particular, the Tariff Act of 1930, 19 U.S.C. § 1553, codified the long-standing practice of temporarily permitting in-bond goods into U.S. territory without the payment of any tariffs or fees:

Any merchandise, other than explosives and merchandise the importation of which is prohibited, shown by the manifest, bill of lading, shipping receipt, or other document to be destined to a foreign country, may be entered for transportation in bond through the United States by a bonded carrier without appraisement or the payment of duties and exported under such regulations as the Secretary of the Treasury shall prescribe.

19 U.S.C. § 1553(a). Consistent with the authority granted to it under § 1553(a), the U.S. Treasury Department has promulgated regulations fleshing out the rules governing in-bond transportation. Most notably, 19 C.F.R. § 18.21 prohibits the in-bond transportation of certain goods that are illegal under federal law:

Narcotics and other articles prohibited admission into the commerce of the United States shall not be entered for transportation and exportation and any such merchandise offered for entry for that purpose shall be seized, except that exportation or transportation and exportation may be permitted upon written authority from the proper governmental agency and/or compliance with the regulations of such agency.

19 C.F.R. § 18.21(b) (emphasis added). Along with illegal narcotics, the only products that are specifically precluded from in-bond transportation through the U.S. are explosives and some foreign lottery tickets. See 19 U.S.C. § 1553; 19 C.F.R. § 18.21(d). Horsemeat is not precluded from in-bond transportation through the U.S.

CONCLUSION

I respectfully request your opinion as to whether Chapter 149 applies to a foreign corporation that transports horsemeat for human consumption in-bond through Texas for immediate export to foreign destinations.

Sincerely,

A handwritten signature in cursive script that reads "Warren Chisum".

Warren Chisum