



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 16, 1977

ATTORNEY GENERAL OPINION NO. 77-89

Mr. Kenneth M. Wilke
Counsel
Department of Agriculture
10th Floor - State Office Building
Topeka, Kansas 66612

Re: Meat and Poultry Inspection--Retail Stores--Exemption

Synopsis: The requirement of K.S.A. 1976 Supp. 65-6a31 that custom products be marked "not for sale" does not apply to product slaughtered in an inspected slaughterhouse and processed in a retail store for the use of the owner of said carcass and meat product resulting therefrom.

* * *

Dear Mr. Wilke:

You inquire concerning application of the Kansas Meat and Poultry Inspection Act to the following factual situation. A business operates an inspected slaughtering plant at location A, and a retail store at location B, which is separate and distinct from location A. The slaughtering plant is inspected as required by Kansas law, and all carcasses and meat coming from that plant are fully inspected as required by law. From time to time, private individuals take animals to the slaughterhouse at location A, and ask that those animals be slaughtered and processed for the owner's use. As a result, animals are slaughtered under inspection at location A, and the inspected carcasses are then transported to the retail store at location B, where these carcasses are broken down into roasts, steaks and other meat food products for the individual customer who furnished the carcass. The cut, wrapped and frozen packages may or may not be placed in frozen food lockers at location B.

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The question which is raised is whether the meat products thus prepared from these inspected carcasses are required to be marked "Custom Not For Sale."

K.S.A. 1976 Supp. 65-6a31(a)(2) of the Kansas Meat and Poultry Inspection Act, provides in pertinent part thus:

"(a) The provisions of this act shall not apply . . . (2) to any person operating a retail store or similar retail type business who prepares only inspected and passed carcasses, parts thereof, meat food products or poultry products for sale to consumers at retail in normal retail quantities; or prepares inspected carcasses, parts thereof, meat food products or poultry products, owned by the consumer and prepared for his consumption, that of his household members, his non-paying guests and employees"

In addition, a partial exemption, i.e., exemption from provisions of the act except those relating to registration, sanitation and adulteration, is afforded by subsection (b) of this section to

"a person slaughtering cattle, sheep, swine, goats, domestic rabbits or poultry delivered by the owner thereof for such slaughter, including the preparation by such slaughterer and the transportation in intrastate commerce of the carcasses, parts thereof, meat food products or poultry products of such animals, exclusively for use or consumption by such owner, members of his household or his non-paying guests and employees; or to the custom preparation by any person, firm or corporation of carcasses, parts thereof, meat or meat food products, derived from the slaughter by any person of cattle, sheep, swine, or goats of his own raising, or from game animals, delivered by the owner thereof for such custom preparation, . . . exclusively for use in the household of such owner, by him and members of his household and his nonpaying guests and employees"

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Carcasses, parts thereof, meat and meat food products which are handled on a custom basis must be marked "Not For Sale."

The exemption of K.S.A. 65-6a31(a)(2) is clearly applicable to the factual circumstances you pose. The individual in question 1) operates a retail store, and 2) prepares inspected and passed carcasses, parts thereof and meat food products which are owned by the consumer and prepared for his consumption. Under subsection (b), custom operations are defined so as to include, clearly, those operations which involve uninspected carcasses, parts thereof and the like. Indeed, it is a prerequisite of exemption from the inspection requirements of the act that all articles prepared on a custom basis be marked "not for sale." The product handled by the retail operator in question is obviously not a custom slaughterer. K.A.R. 4-16-1(mm) defines the term "custom slaughter" as

"[t]he killing of any animal, delivered by the owner thereof, the dressing (removal of hide and offal) without ante mortem and post mortem inspection, the preparation, the packaging, the freezing, and the transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animal, exclusively for use in the household of such owner, by him and members of his household, and his nonpaying guests and employees." [Emphasis supplied.]

Under both the regulation and the statutory provisions regarding custom operations in K.S.A. 1976 Supp. 65-6a31, custom operations are those involving uninspected carcasses and meat, and it is the uninspected product which must be marked "not for sale." The product involved here is inspected product, and is processed by a retail store operator who satisfies every statutory and regulatory requirement for exemption from the act, including the requirement that the product be marked "not for sale", which applies only to custom product, which virtually by definition is uninspected product. See also 9 C.F.R. § 303.1(d)(2)(iii).

In short, in my judgment, the requirement of K.S.A. 1976 Supp. 65-6a31(b) that custom product be marked "not for sale" does not apply to inspected meat products which result from slaughtering

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in an inspected facility and processing in a retail store for delivery only to the owners of said product for the owner's own use.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

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