



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 8, 1985

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 85- 16

The Honorable Robert G. Frey
State Senator, Thirty-Eighth District
128-S, Capitol Building
Topeka, Kansas 66612

Re: Public Health -- Meat and Poultry -- Inspection of
Animals Before Slaughter; Exceptions

Synopsis: The Kansas Meat and Poultry Inspection Act, K.S.A.
65-6a18 et seq., provides for the inspection of
various meat and poultry products which are used
in intrastate commerce, in order to insure that no
adulterated products are sold for human consumption.
The act does not apply to meat which is donated for
consumption at a church dinner, even if a free will
offering is taken, in that such activities are not
a part of intrastate commerce. Cited herein: K.S.A.
1984 Supp. 65-6a18; K.S.A. 65-6a20; 65-6a27; K.A.R.
1983 Supp. 4-16-1.

* * *

Dear Senator Frey:

As State Senator for the Thirty-Eighth District, which includes part or all of Seward, Ford, Clark, Grey, Meade and Haskell counties, you request our opinion on two inter-related questions concerning the slaughtering of a hog by a church in your district. Specifically, you inform us that a church in Copeland, Kansas wishes to hold its traditional Ground Hog Day dinner using a hog which is donated, slaughtered and processed by local farmers. No charge is made for attending the dinner, although a free will offering is taken. In that questions have

been raised concerning the application of the Kansas Meat and Poultry Inspection Act, K.S.A. 65-6a18 et seq., you request our opinion on the following questions:

1. Does a church function which involves the slaughtering and processing of an animal with the use of the meat for consumption at a church dinner constitute a function which is controlled by the Meat and Poultry Inspection Act?
2. Does the practice of asking for a free will offering at the dinner constitute "intrastate commerce" as defined by K.S.A. 1984 Supp. 65-6a18(f)?

The Kansas Meat and Poultry Inspection Act was enacted into law in 1969, and is designed "for the purpose of preventing the use in intrastate commerce, as hereinafter provided, of meat and meat products, poultry and poultry products, which are adulterated." K.S.A. 65-6a20. To fulfill this purpose, a series of inspections are established by the statutes, both before and after slaughtering takes place, as well as other requirements for labeling, sanitary conditions and storage and handling. K.S.A. 65-6a27 makes it a violation of the act to slaughter, prepare or transport any of the meat or poultry products covered by the act except as provided for by the statutes. Accordingly, given that the meat in your situation (pork) is covered by the definition of "meat food product" [K.S.A. 1984 Supp. 65-6a18(g)] and is intended for human consumption, the provisions of the act would apply, unless an exception is provided.

In our opinion, the act provides two separate exceptions for the church's activities under the facts as you present them. First, as noted above, the act is intended to prevent the use of adulterated meat in "intrastate commerce." That term is defined by K.S.A. 1984 Supp. 65-6a18(f) as meaning "commerce within the state of Kansas." The term "commerce," in turn, has been defined as including transportation of commodities and dealing in commercial products, involving the purchase, sale or exchange of merchandise. Black's Law Dictionary, p. 358, 3rd ed. (1933); 7A Words and Phrases, p. 454 (1952). The term is a practical concept, and what falls within it must be determined by considering established facts and known commercial methods. Kansas Public Utilities Commission v. Landon, 249 U.S. 236, 63 L.Ed. 577 (1919).

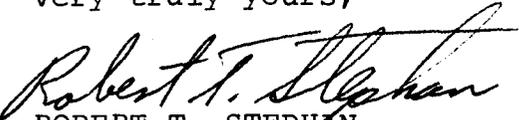
Under the facts set out above, the meat used by the church is donated by a local farmer, is processed for no charge by that farmer or another in the area, and is consumed at a church function to which anyone is invited at no charge. Although an argument could be made that commerce, whether interstate or

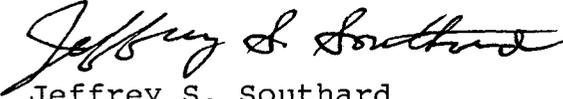
intrastate, is involved in the purchase of other food items consumed at the event, as far as the meat is concerned, no commerce is present, given that both the material and labor are donated, rather than sold or purchased.

Nor in our opinion is the fact that a donation is requested sufficient to provide an element of "intrastate commerce," as that term is defined by K.S.A. 1984 Supp. 65-6a18(f). Proceeds of the dinner go to the church, which itself is not a commercial enterprise, with there being no minimum amount which must be donated. Administrative rules and regulations issued by the state department of agriculture which define "restaurant" and "retail store" [K.A.R. 1983 Supp. 4-16-1(dd) and (gg)] give an indication that the act covers the "sale" of products, with nothing said as to food served at no cost but that of an unspecified voluntary donation. In the absence of any indication that the legislature intended to cover occasional activities of voluntary religious groups within the scope of intrastate commerce, we are not prepared to enlarge the term beyond its commonly understood meaning.

In conclusion, the Kansas Meat and Poultry Inspection Act, K.S.A. 65-6a18 et seq., provides for the inspection of various meat and poultry products which are used in intrastate commerce, in order to insure that no adulterated products are sold for human consumption. The act does not apply to meat which is donated for consumption at a church dinner, even if a free will offering is taken, in that such activities are not a part of intrastate commerce.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Jeffrey S. Southard
Deputy Attorney General