

FILE

Subject

Agriculture, Poultry Inspection

Copy to



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

August 13, 1974

Opinion No. 74- 272

Warden L. Noe
Attorney
State Board of Agriculture
State Office Building
Topeka, Kansas 66612

Dear Mr. Noe:

You inquire whether the Taco Tico Commissary, located at 211 N. Minneapolis, Wichita, Kansas, is subject to inspection pursuant to the Kansas Meat and Poultry Inspection Act, K.S.A. 65-6a18 *et seq.* More specifically, the question has arisen whether the commissary constitutes a "restaurant" and is thus exempt therefrom under K.S.A. 65-6a31, and subject to licensing and inspection by the State Food and Lodging Board as a "catering kitchen" or "restaurant" under K.S.A. 36-301 *et seq.*

The commissary is the point of preparation of ingredients in food served by the Taco Tico company at restaurants operated elsewhere in the Wichita area, and perhaps at points beyond. No food is sold and served at retail at the commissary itself. Rather, it constitutes a kitchen at which the ingredients are cooked and prepared, then transported to various restaurants where the ingredients are assembled into servings and sold there, either for off-or on-premise consumption. The products are identified on a label which is reproduced on a document you have furnished us, as taco filling with meat and textured vegetable product, and chili with meat and textured vegetable product. These items clearly constitute "meat food product," defined at K.S.A. 65-6a18(g) thus:

"The term 'meat food product' means any product capable of use as human food which is made wholly or in part from any meat or other portions of the carcasses of any cattle, sheep, swine, domestic rabbits or goats, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been con-

sidered by consumers as products of the meat food industry. . . ."

K.S.A. 65-6a23 states in pertinent part thus:

"For the purposes hereinbefore set forth the secretary shall cause to be made by inspectors appointed for that purpose an examination and inspection of all meat food products and poultry products prepared in any slaughtering, canning, salting, packing or similar establishment, where such articles are prepared for intrastate commerce"

The term "prepared," is defined by K.S.A. 65-6a18(k) as meaning

"slaughtered, canned, salted, rendered, boned, cut up or otherwise manufactured or processed."

From the description of the formula and method of preparation, the chili and taco meat clearly constitute "meat food product" in which meat constitutes a major ingredient, and which is prepared, processed or manufactured on the premises of the commissary.

Notwithstanding, it is urged that the establishment is exempt under K.S.A. 65-6a31, which states in pertinent part thus:

"(a) The provisions of this act shall not apply . . . (3) to any person operating a restaurant who prepares only inspected and passed carcasses, parts thereof, meat food products or poultry products for human consumption."

The act itself contains no definition of the term "restaurant." At K.A.R. 4-16-1(22), however, the term is defined thus:

"Any establishment where product is prepared only for sale or service, in meals or as entrees, directly to individuals, or for consumption in the home, either frozen or fresh cooked."

The regulation is silent whether the "sale or service, in meals or entrees" may occur on or off the premises. This omission is not critical. The term "restaurant" is defined, and properly so, in terms of preparation of product, i.e., for sale or service as meals or entree. All, or virtually all, meat intended for human consumption is, of course, destined ultimately for sale or service in meal or entree portions. A restaurant is defined as a place where meat food product is prepared only for that purpose. It may be argued, of course, that all meat food product prepared at the commissary is prepared only for the purpose of sale and service

to customers at Taco Tico restaurants in meal or entree portions. More immediately, and more to the point here, however, the meat food product prepared at the commissary is prepared directly and exclusively for use as an ingredient in meals or entrees which are assembled, sold or served elsewhere at restaurants. The commissary cannot itself claim the exemption of a restaurant merely on the ground that its product is destined ultimately to be sold and served elsewhere at restaurants. The commissary is more accurately described as a manufacturing plant. That a product is sold and marketed exclusively through restaurants does not entitle the establishment where the product is made to a "restaurant" exemption unless it is, itself, a restaurant. At the commissary in question here, the product is not prepared "only" for sale or service directly to individuals in meals or as entrees, but rather, it is prepared specifically for transportation to restaurants elsewhere for use in the assembly of meals and entrees which are sold through those restaurants.

K.S.A. 36-301(b) defines the term "restaurant" for the purposes of licensure and inspection by the State Food and Lodging Board:

"'Restaurant' shall mean any food service business, fixed or mobile, coffee shop, dining room, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, drive-in, soda fountain, tavern, bar, night club, roadside stand, industrial feeding business, food vending machine or *catering kitchen*" [Emphasis supplied.]

The term "catering kitchen" is not defined. However, it appears in a lengthy enumeration of kinds and types of food-service operations, none of which include the manufacture of ingredients for use in restaurant operations elsewhere. All of the terms used are ones of common and ordinary acceptation, which describe retail food service operations engaged in the sale and service of food directly to persons in meal or entree portions for consumption on or off the premises. None of them commonly are engaged in the manufacture of ingredients for incorporation in the foods sold and served elsewhere in restaurant operations. A catering kitchen commonly denotes a kitchen facility where food is prepared directly for service in meal portions, either in adjoining premises or elsewhere. It does not commonly denote a manufacturing plant, where ingredients only are prepared which later, at another point, become incorporated into prepared dishes through commercial restaurant operations.

It is, accordingly, our view that the commissary in question here constitutes an establishment which is subject to licensure and inspection under the Kansas Meat and Poultry Act, K.S.A. 65-6a31, that it does not constitute a "restaurant" exempt

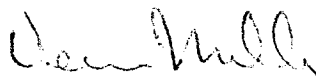
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therefrom under K.S.A. 65-6a31, and that it is not a "catering kitchen" subject to licensing and inspection by the State Food and Lodging Board.

You also inquire concerning a similar Taco Tico commissary located in Arkansas City, Kansas, which differs from the Wichita facility discussed above only in that at the former, there is also located, in connection therewith, a restaurant serving operation open to the public. We have not been furnished a description of the precise physical layout and operation of that facility. The exemption of K.S.A. 65-6a31(s) extends only, of course, to a "restaurant," and if the commissary functions in a dual capacity, that is, first, as the processing or manufacturing point for meat product ingredients prepared in bulk for use in restaurants, and secondly, as a kitchen facility for an on-premise restaurant, the commissary is no longer merely and exclusively a restaurant, and thus loses its entitlement to exemption from inspection under K.S.A. 65-6a31(3). The Kansas Meat and Poultry Act, K.S.A. 65-6a18 *et seq.* constitutes remedial legislation, passed in the exercise of the state police power in the interests of public health and sanitation. Exemptions therefrom should be construed no more broadly than the explicit language requires. If the Arkansas City commissary is operated, as we are advised, for a purpose other than an exclusively restaurant purpose, i.e., for bulk manufacturing or processing of meat food products for use in restaurants, in that event it is no longer entitled to exemption from licensing and inspection under the act.

If further questions arise concerning this matter, please do not hesitate to call upon us.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm

cc: Edmund R. Learned
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