STATE OF TENNESSEE
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November 27, 2013

Opinion No. 13-95

Sale of Horsemeat for Human Consumption

QUESTION

May horses be slaughtered in Tennessee for the purpose of selling the horsemeat for human consumption, regardless of where the actual sale occurs?

OPINION

No. The sale of horsemeat slaughtered in the state for human consumption is expressly prohibited by Tenn. Code Ann. §§ 53-7-101 to -103, regardless of where the actual sale may occur.

ANALYSIS

The sale or offering for sale of horsemeat is expressly regulated by Tenn. Code Ann. §§ 53-7-101 to -103. Specifically, Tenn. Code Ann. § 53-7-101 provides:

> All horsemeat sold, offered for sale or exposed for sale shall be denatured with at least two percent (2%) charcoal or other similar inert ingredient and shall be in package form, and so labeled as to show that it contains horsemeat that has been denatured with at least two percent (2%) charcoal or other similar inert ingredient.

The "denaturing" of food referenced in this statute renders the horsemeat unfit for human consumption. See 21 U.S.C. § 601(k). See also Tenn. Comp. R. & Regs. 0080-05-04-.01 (requiring that eggs found unfit for human food "shall be denatured or destroyed at hatchery"). A meat product is "'capable of use as human food' . . . unless it is denatured or otherwise identified as required by regulations prescribed by the Secretary to deter its use as human food, or it is naturally inedible by humans." 21 U.S.C. § 601(k). (emphasis added). The United States Food and Drug Administration states "the basic purpose of denaturing is to prevent salvage or diversion of violative materials for human consumption."[1] The denaturing process leaves the meat "readily distinguishable from an article of human food." 9 C.F.R. § 325.11(d)(1)(iii). Using "finely powdered charcoal" is a recognized and acceptable way to denature meat products. 9 C.F.R. § 325.13(a)(2).

[1] Investigations Operation Manual, U.S. Food and Drug Administration, May 24, 2013, available at http://www.fda.gov/ICECI/Inspections/IOM/ucm122516.htm.

The Tennessee Commissioner of Agriculture has authority to enforce the provisions of Tenn. Code Ann. § 53-7-101. Tenn. Code Ann. § 53-7-102. Any "person, firm, or corporation" violating Tenn. Code Ann. § 53-7-101 commits a Class C misdemeanor. Tenn. Code Ann. § 53-7-103.[2]

In construing statutes, courts must "ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope." *Wilson v. Johnson County*, 879 S.W.2d 807, 809 (Tenn. 1994). When the statute is unambiguous, legislative intent is determined from the plain and ordinary meaning of the language used in the statute. *Freeman v. Marco Transp. Co.*, 27 S.W.3d 909, 911 (Tenn. 2000).

Under the plain language of the statute, horsemeat "sold, offered for sale or exposed to sale" must be denatured and is thereby rendered unfit for human consumption. Tenn. Code Ann. § 53-7-101. The statute requires that charcoal or "other similar inert ingredient" be used to denature the meat. *Id.* Requiring that horsemeat be denatured can have no other effect than to ensure horsemeat "sold, offered for sale or exposed for sale" is unfit for human consumption. The statute also requires that the denatured horsemeat be packaged and labeled to show that it contains denatured horsemeat. *Id*. This is a further prophylactic measure to ensure the meat is clearly recognizable as unfit for human consumption.

The statute makes no distinction between horsemeat sold within Tennessee or outside its borders. Rather, the statute states that "all" horsemeat "sold, offered for sale or exposed for sale" must be denatured. Tenn. Code Ann. § 53-7-101. This means that any and all horsemeat slaughtered in Tennessee that will be "sold, offered for sale, or exposed to sale" in any location must be denatured so that humans will not consume it. *Id.* This interpretation is supported by the fact that failure to denature horsemeat is classified as a misdemeanor crime, subject to the provisions of Tennessee's penal code. Tenn. Code Ann. § 53-7-103; Tenn. Code Ann. §§ 39-11-102 to -103. The statute permits punishment for an offense commenced within Tennessee yet consummated outside of Tennessee. Tenn. Code Ann. § 39-11-103(c). Thus, if a horse is slaughtered within Tennessee and its meat is not denatured and sold outside of Tennessee, the crime is still punishable in Tennessee "in the county where the offense was commenced." Tenn. Code Ann. § 39-11-103(c).

Therefore the clear intent of the General Assembly, as expressed through the plain meaning of Tenn. Code Ann. § 53-7-101 to -103, expressly prohibits the sale of horsemeat slaughtered in the state for human consumption, regardless of whether the sale takes place in Tennessee.

[2] Classifying the crime as a misdemeanor invokes Tennessee's territorial jurisdiction under Tenn. Code Ann. §§ 39-11-102 to -103. Section 39-11-102(b) applies the purpose and reach of Tennessee's penal code to "offenses defined by other laws." This provision brings the misdemeanor crime defined by Section 53-7-103, itself outside of the penal code, within the scope of the penal code and Tennessee's territorial jurisdiction. Section 39-11-103(c) states: "When the commission of an offense commenced within this state is consummated outside of its boundaries, the offender is liable to punishment in this state in the county where the offense was commenced." Tenn. Code Ann. § 39-11-103(c).

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