

PURE FOOD AND DRUG ACT: Duty of enforcing embargo provisions  
CIRCUIT ATTORNEY: of Missouri Food and Drug Law devolves  
upon circuit attorney for City of  
St. Louis.



August 12, 1954

James R. Amos, M. D., Director  
Division of Health  
State of Missouri  
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion  
of this department reading as follows:

"We recently embargoed over 3,000 cases  
of salad olives, packed by a manufacturer  
located in the city of St. Louis, Missouri.  
Laboratory analysis of these olives showed  
that they were contaminated with insects,  
insect excreta, pupae and larvae in various  
stages of development, and in some cases a  
considerable amount of sand, grit and other  
extraneous matter.

"This information was transmitted to our  
representative in St. Louis, Missouri, Mr.  
Edwin Bolfig, who in turn took the infor-  
mation to the City Prosecuting Attorney's  
Office and asked for assistance in securing  
condemnation of these olives.

"Mr. Bolfig was informed by the City Prose-  
cuting Attorney that this was not his duty  
but was the duty of the Circuit Attorney's  
Office. Mr. Bolfig then proceeded to the  
Circuit Attorney's Office and the Circuit  
Attorney advised him that this was the duty  
of the Prosecuting Attorney's Office.

"Since neither of these officials felt that  
the enforcement of the State Food and Drug  
Laws, Chapter 196, was his responsibility,  
it will be appreciated if you would give us

James R. Amos, M. D., Director

an official opinion concerning this matter since we are desirous of knowing who is responsible for enforcing the State Food and Drug Laws in the city of St. Louis, Missouri."

Provisions relating to the enforcement of the Missouri Pure Food and Drug Act are found in Section 196.035 RSMo 1949, reading, in part, as follows:

"It shall be the duty of the prosecuting attorney in any county or city in the state, when called upon by the division of health, or any of its assistants, to render any legal assistance in his power to execute the laws and to prosecute cases rising under the provision of sections 196.010 to 196.120.\* \* \*" (Emphasis ours.)

Looking to other statutes relating to the circuit attorney in the City of St. Louis, we find the following provisions contained in Section 56.430 RSMo 1949:

"At the general election to be held in this state in the year 1948, and every four years thereafter, there shall be elected in the city of St. Louis one circuit attorney, who shall reside in said city, and shall possess the same qualifications and be subject to the same duties that are prescribed by this chapter for prosecuting attorneys throughout the state, and the city register of said city shall transmit to the secretary of state an abstract of the votes given for each candidate for circuit attorney in said city, in the same manner as is required by law of clerks of county courts." (Emphasis ours.)

It is clear that under the quoted provisions of Section 196.035 the duties relating to enforcement of the Missouri Pure Food and Drug Act have been placed upon the prosecuting attorneys in the various counties. Aside from this specific provision we find further that under the provisions of 56.060 RSMo 1949, the duty of representing the State generally in all civil matters has been placed upon such official. This section reads, in part, as follows:

James R. Amos, M. D., Director

"The prosecuting attorneys shall commence and prosecute all civil and criminal actions in their respective counties in which the county or state may be concerned, \* \* \*."  
(Emphasis ours.)

It is our thought that the confusion in connection with this matter has arisen by virtue of the existence of both a "circuit attorney" and a "prosecuting attorney" in the City of St. Louis. However, examining the statutory duties imposed upon the prosecuting attorney for such city, we find that such duties are not broad enough to encompass proceedings brought under the statutes referred to in your letter of inquiry. The duties of such official are delineated in 56.490, RSMo 1949, reading as follows:

"The prosecuting attorney of the St. Louis court of criminal correction shall attend to and prosecute all suits brought therein, and he shall appear for the state in all cases appealed from said court to the St. Louis court of appeals; the prosecuting attorney shall attend at his office, on each secular day of the week, for the purpose of preparing all complaints, affidavits, informations and pleas required by law to be lodged in said court."

It is apparent that the duties of the prosecuting attorney in the City of St. Louis are limited to the prosecution of misdemeanors in the St. Louis Court of Criminal Corrections.

It is true that under the provisions of Section 196.025 RSMo 1949, acts constituting adulteration or misbranding of food products such as are described in your letter of inquiry and other violations of the Pure Food and Drug Act are made misdemeanors. It therefore would be the duty of the prosecuting attorney in the City of St. Louis to institute any criminal proceedings which might arise as a result of the commission of such acts.

#### CONCLUSION

In the premises, it is the opinion of this department that the duty of enforcing the embargo provisions of the Missouri Pure Food and Drug Act within the City of St. Louis rests upon the circuit attorney for such city.

James R. Amos, M.D., Director

It is the further opinion of this department that criminal proceedings based upon violations of the Pure Food and Drug Act should be prosecuted by the prosecuting attorney of such city.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

John M. Dalton  
Attorney General

WFB/vtl