

1980 WL 121142 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 2, 1980

*1 Hon. T. Ed Garrison
Senator Senate District No. 1
Gressette State Office Building
Capitol Complex
Columbia, South Carolina 29211

Dear Sen. Garrison:

You have asked whether it would be acceptable for grain refineries and alcohol distilleries to be included among those activities that qualify for inclusion in farm marketing centers.

Act No. 186 of 1935 (now codified as Sections 46-19-110 et seq., Code of Laws of S. C. (1976), embodies within its sections the statutory authority for the establishment and operation of county and municipal farm marketing centers. Section 46-19-120 sets forth the specific types of projects around which a farm marketing center may be established. These projects are:

‘ . . . a cannery, a creamery, a meat-packing house, an assembly plant for poultry and eggs, a feed-grinding and mixing plant and any other equipment necessary and proper for the processing and preparing for market of any of the products of the farms . . . ’ (Emphasis added).

The question presented is therefore, in essence, one of whether alcohol distilleries are such mechanisms as will fit within the meaning of ‘ . . . any other equipment necessary and proper for the processing and preparing for market of any of the products of the farms of this State . . . ’

The phrase ‘necessary and proper’ has received numerous constructions based on its usage in the U. S. Constitution (Art. I, Sec. 8). However, in this more practical, non-legislative context of farm product processing it would appear to be more rational to find that the very broad and expansive interpretations given the phrase as a basis for legislative action are, here, inappropriate.

‘Necessary’ is a word which must be considered in the connection in which it is used, as it is a word susceptible of various meanings. It has been defined as an adjective expressing degrees and may express mere convenience or that which is indispensable or an absolute physical necessity. Black’s Law Dictionary, (4th Ed. 1968). The definition most pertinent to the question presented was enunciated in relation to a corporate power to own land where ‘necessary’ was held not to mean ‘that which is indispensably necessary,’ but to import that which is ‘proper, useful and suitable’ and to imply actual need in contradistinction to mere preference. 28 Words & Phrases 1979 Cum. Supp. citing Leforce v. Bullard, Okla., 454 P.2d. 297, 301.

Applying this definition to the statutory provision presented it is to be concluded that projects such as alcohol distilleries and grain refineries could not be included within the set of activities legally authorized for inclusion in a statutory farm market center. The processing of grain into starches, simple sugars, and distillers grains for use in animal feeds and ethyl alcohol is a multifaceted, complicated procedure which in many respects is as complex as the refining of oil or chemicals and equally as costly. Forbes, March 3, 1980, p. 47. In fact, ethanol itself is a chemical—a class IB flammable solvent—which can be used to remove other chemical residues.

*2 While the equipment involved with the milling of corn into starch and simple sugars would fit into the category of equipment ‘for the processing and preparing for market,’ such equipment cannot be said to be actually necessary but would be included

only as the result of someone's preference to market corn as corn starch, corn oil, or alcohol rather than as No. 2 shelled yellow corn. This conclusion is based upon an analysis of the other types of projects specified in Section 46-19-120. It is readily evident that throughout the processing involved of these specific projects, the essential character of the products remains the same. Whereas sausage, for example, is a product of a meat-packing house, it both (1) retains the essence of the raw farm commodity—it remains after processing the flesh of the animal involved; and (2) is formed by a process (sausage-making) needed to avoid substantial waste of other less desirable cuts of the hog. Farm-derived alcohol, on the other hand, (1) retains no characteristic of the farm product from which it is extracted and (2) is obtained only after several complex distilling stages which are not necessary—that is, merely optional—to the preparation of the raw, parent commodity for marketing.

The preceding analysis is bolstered by the consideration of the phrase 'any of the products of the farms'. It is apparent from the nature of modern grain alcohol distilleries and grain refineries that most of the processes involved operate not on products of the farm but upon processed derivatives of farm products.

An anhydrous ethanol distillery producing neat ethanol (200-proof), for example, operates for the most part not on shelled corn, but on hydrolyzed starches which are converted to alcohol through interaction with fermentation yeasts. An upon the completion of the initial crushing-grinding step where, for instance, corn is ground to chick-feed size particles, the 'product of the farm' is ready for market in keeping with the purpose stated in Sections 46-19-120. Titus, Making On-Farm Ethanol Fuel, Clem. Univ. (Rev. ²/80), p. 2.

In construing a statute or group of statutes, the primary guide is, of course, the intent of the legislature. [Helfrich v. Brasington Sand & Gravel Co.](#), 268 S. C. 236, 233 S.E.2d 291 (1977). It is the opinion of this Office that the General Assembly in enacting Sections 46-19-110 et seq. intended to facilitate the acquisition and establishment by certain local governments of farm product processing plants which would complete the needed preparation of direct products of the State's farms and that the preparatory operations or processes contemplated would not be so complex and sophisticated as to result in end products totally unidentifiable from the raw farm product such as would be the case with grain alcohols.

Sincerely,

Reddick A. Bowman, Jr.
Assistant Attorney General

1980 WL 121142 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.