

OFFICIAL OPINION NO. 76-43, Scope of exemptions from meat inspections pursuant to SDCL 39-5

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Mr. Jerry C. Rchetto
Lawrence County State's Attorney
Deadwood, South Dakota 57732

OFFICIAL OPINION NO. 76-43

Scope of exemptions from meat inspections pursuant to SDCL 39-5

Dear Mr. Rchetto:

You have requested an opinion on the following question:

Do the exemptions from meat inspection and preparation as set forth in SDCL 39-5-11 apply to the facilities used by the persons described in the exemptions?

SDCL 39-5-11 provides:

The following *meat and meat products* to be used for human consumption are exempt from the inspection and preparation provisions of §§39-5-6 to 39-5-45, inclusive:

- (1) Any livestock producer with respect to slaughter on his own farm of livestock raised by him on his own farm and with respect to the preparation by him on such farm of the carcasses, parts thereof, and meat food products, of such livestock, and with respect to such articles: Provided, that such livestock producer does not otherwise engage in the business of slaughtering livestock or preparing livestock carcasses, parts thereof, or meat food products and does not engage in the business of buying or selling livestock other than those raised on his own farm, or livestock carcasses, parts thereof, or meat food products, other than those produced from such livestock and does not slaughter or permit any other person to slaughter on his farm any livestock not owned by him, except under exemption as provided for in subdivision (3);
- (2) Repealed by SL 1970, ch. 227.
- (3) Persons engaged in custom slaughtering of livestock and preparation of the carcasses,

parts thereof, and meat food products, only with respect to the slaughter of livestock delivered by the owner thereof for custom slaughter, and the preparation of the carcasses, parts thereof, and meat food products of such livestock for use by such owner of his household and nonpaying guests;

(4) Any person engaged in slaughtering livestock or preparing livestock carcasses, parts thereof, or meat food products, solely for intrastate commerce, and the articles so prepared by such person, whenever the secretary determines that application of such specific provisions would be impracticable and an exemption to §§39-5-6 to 39-5-45, inclusive, will otherwise aid in the effective administration of §§39-5-6 to 39-5-45, inclusive, or that the exemption is necessary to avoid recognized religious dietary laws.

(5) The inspection, adulteration and misbranding provisions of §§39-5-6 to 39-5-45, inclusive, shall not apply to the slaughter of livestock or the preparation of livestock carcasses, parts thereof, or meat food products by any person for use in his own household or by members of his household and nonpaying guests.

SDCL 39-5-24 then provides for the following inspections:

Each *establishment* at which livestock are slaughtered or livestock carcasses or parts thereof or meat food products are prepared solely for intrastate commerce shall have such premises, facilities, and equipment, and be operated in accordance with such sanitary practices, as are required by regulations prescribed by the secretary for the purpose of preventing the entry into and movement in such commerce of carcasses, parts thereof, and meat food products, which are adulterated. No livestock carcasses, parts thereof, or meat food products shall be admitted into such establishment unless they have been prepared only under inspection pursuant to §§39-5-6 to 39-5-45, inclusive, or the Federal Wholesome Meat Act or imported in compliance with the latter Act.

The issue to be determined is the extent to which SDCL 39-5-24 modifies SDCL 39-5-11.

It is my opinion that the two statutes address very separate and distinct aspects of the total inspection procedure. The purpose of the act, as set forth in detail in SDCL 39-5-14, is to protect the general public from exposure to and consumption of adulterated meat and meat products. Therefore, since adulteration may occur at various stages in the total processing and marketing procedure, inspection and other preventative measures must be available at all such stages.

The Legislature has recognized the nature of the problem as evidenced by a number of provisions in SDCL 39-5. For example, SDCL 39-5-12 authorizes withdrawal or denial of the exemption under SDCL 39-5-11 if "such action will aid in effectuating the purposes" of the inspection law.

SDCL 39-5-8 provides broad rule making power to the executive secretary of the South Dakota Livestock Sanitary Board as follows:

In addition to the regulations specifically authorized by §§39-5-6 to 39-5-45, inclusive, the secretary may promulgate such rules and regulations, and require such reports from persons subject to §§39-5-6 to 39-5-45, inclusive, as he deems appropriate to carry out the purposes and provisions of §§39-5-6 to 39-5-45, inclusive.

Rules and regulations shall be promulgated under §§39-5-6 to 39-5-45, inclusive, in conformity with the rules and regulations under the Federal Wholesale Meat Act as now in effect and with subsequent amendments thereof, unless they are considered by the secretary as inconsistent with the objectives of §§39-5-6 to 39-5-45, inclusive.

Therefore, in my opinion, the answer to your specific question is NO. Pursuant to SDCL 39-5-8 and particularly SDCL 39-5-24, the secretary may promulgate rules as are deemed necessary to insure that sanitary premises, facilities and equipment are maintained. Such rules need not affect or interfere with the exemption from inspection of meat and meat products processed in the facilities as provided in SDCL 39-5-11.

Senate Bill 223, introduced in the 1976 session of the Legislature, would have provided some clarification to the question you have raised. However, that bill was not enacted into law. If the intent of the Legislature is something other than the interpretation herein given, it should specifically address the question next year.

Respectfully submitted,

WILLIAM J. JANKLOW
ATTORNEY GENERAL

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