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## Texas Department of Health

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December 5, 2001

RQ-0478-JC

Honorable John Cornyn  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78701

Attention: Opinion Committee

Re: Texas Agriculture Code, Chapter 150  
Imported Fresh Meat

FILE # ML-42317-D1  
I.D. # 42317

Dear General Cornyn:

Chapter 150 of the Texas Agriculture Code is divided into Subchapters A and B. Subchapter A requires that all imported fresh meat be labeled "Product of \_\_\_\_\_ (nation of origin of the imported fresh meat)." The Texas Department of Health has not adopted rules for this Subchapter. Subchapter B of Chapter 150, Texas Agriculture Code requires the Texas Board of Health to adopt rules prohibiting state agencies from purchasing beef imported from outside the United States. The Texas Board of Health has adopted rules pursuant to Subchapter B, which are 25 TAC §229.31, 32 and 33, effective January 1, 1976.

Questions Presented:

Is Subchapter A of Chapter 150, Texas Agriculture Code in violation of the Commerce Clause of the United States Constitution Article I, §8, clause 3, the Federal Meat Inspection Act, (FMIA), 21 U.S.C. 5678 and the Poultry Products Inspection Act, 21 U.S.C. 467e?

Is Subchapter B of Chapter 150, Texas Agricultural Code and the rules adopted pursuant to that Subchapter, in violation of the Commerce Clause of the United States Constitution in prohibiting state agencies from purchasing beef imported from outside the United States?

The Commerce Clause gives Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States," U.S. Const. Art. I, §8, cl.3. While the clause is phrased as an affirmative grant of power, it has a "negative" or "dormant" aspect that restricts the states' power to enact laws that interfere with interstate or foreign commerce. *Oregon Waste Sys., Inc. v. Department of Env'tl. Quality*, 511 U.S. 93, 98 (1994). The principle underlying the interstate aspect of the Commerce Clause is that "our economic unit is the Nation," and states therefore may not act in isolation as separate economic units. *H.P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525,537-38 (1949); *accord, Oregon Waste Sys.*, 511 U.S. at 98. Similarly, the foreign aspect of the Commerce Clause is intended to allow Congress to "speak with one voice" for the country in economic dealings with foreign nations. *Japan Line, Ltd. V. County of Los Angeles*, 441 U.S. 434, 449 (1979).

Section 408 of the FMIA (21 U.S.C. 678) and section 23 of the PPIA (21 U.S.C.467 (e)) contain explicit preemption provisions regarding labeling requirements for meat and poultry products. These provisions explicitly prohibit states from imposing any labeling requirements for meat and poultry products prepared at federally inspected establishments which are in addition to, or different from, those imposed under the Acts. Those sections also make it clear that states are not authorized to impose any requirements, or take any actions, that are not consistent with the FMIA and the PPIA in regard to any other matter regulated by them.

If you have any questions concerning this request, please direct your inquiries to Susan K. Steeg, General Counsel, at (512) 458-7236, [Susan.Steeg@tdh.state.tx.us](mailto:Susan.Steeg@tdh.state.tx.us). Thank you for your attention to this matter.

Sincerely,

Handwritten signature of Eduardo J. Sanchez, M.D. in black ink, with the initials "MD" written to the right of the signature.

Eduardo J. Sanchez , M.D., M.P.H.  
Commissioner of Health