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Advertising

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purposes prescribed in Chapter 40-47 of the 1943 Revised Code. The esthetic feelings of the people of a residential section of the city may, of course, be taken into consideration; likewise depreciation of existing dwellings by the erection of unsightly structures. But zoning regulations may not be arbitrary, capricious or unfairly discriminating in their results. They must be reasonable and must be primarily designed to promote the welfare of the community.

Yours truly,
 NELS G. JOHNSON
 Attorney General
 By I. A. ACKER
 Assistant Attorney General

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ADVERTISING

May 9, 1947

Mr. R. O. Baird,
 State Food Commissioner and Chemist
 State Laboratories Department,
 Bismarck, North Dakota.

Dear Mr. Baird:

Your letter of May 7, addressed to this office, has been received, in which you request an opinion on the following situation:

The Regan Brothers Company of Fargo, North Dakota, is advertising and labeling their bread as "Holsum Super Enriched White Bread." You have taken exception to the use of the term "super" in connection with the term "enriched", on the basis that the North Dakota enriched flour and bread law names the ingredients and sets the relatively narrow limits on the amount of each of these required for enrichment of bread. Because of this you have not felt that a baker is justified in using a superlative term to designate degree of enrichment and that the use of such terms is purely for competitive advertising and as a result these terms only create confusion regarding enrichment of bread.

Section 51-1201 N. D. R. C. 1943 prohibits false and misleading advertising and is as follows:

"False and Misleading Advertising Prohibited. No person, firm, corporation, or association with intent to sell, dispose of, increase the consumption of, or induce the public to enter into an obligation relative to, or to acquire title or interest in any food, drug, medicine, patent and proprietary product, merchandise, security, service, medical treatment, paint, varnish, oil, clothing, wearing apparel, machinery, or anything offered to the public, shall make, publish, disseminate, circulate, or place before the public, or directly or indirectly shall cause to be made, published, disseminated, circulated, or placed before the public in a newspaper, or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, tab, letter, or in any other way, an advertisement which contains any assertion, representation, or statement of fact which is untrue, deceptive, or misleading regarding such food, drug, medicine, patent and proprietary product, merchandise, security, service, medical treatment, paint, varnish, oil, clothing, wearing apparel, machinery, or anything offered to the public."

You will note that the prohibition in this statute is against using any advertising, notice, handbill, poster, bill, circular, pamphlet, tab, label, letter, or in any other way, any advertisement which contains any assertion, representation or statement of fact which is untrue, deceptive or misleading regarding such food, drug, medicine, etc.

Chapter 177 of the Session Laws of 1945 prescribes flour and bread standards. Section 1 (a) of said act defines flour and specifies the different

kinds, such as white, bromated, self-rising, phophated, etc. Subdivision (b) defines white bread. Subdivision (c) defines rolls.

Section 2 of said act prescribes the quantity of the ingredients of the various flour mixtures.

Subdivision (a) of section 4 of said act makes it the duty of the Commissioner to enforce the provisions of the act and authorizes and directs him to make, amend or rescind rules, regulations and orders for the efficient enforcement of the act.

You further state in your letter that Regan Brothers have a claim on their "super enriched" bread, showing minima substantially higher than those in the standard claim but still well below the maxima set in the law. In addition, they show amounts of Vitamin D and calcium which are not required by the law. In view of this statement, it does not appear that Regan Brothers are violating section 51-1201, since they are not making any untrue, deceptive or misleading statement regarding their product. They not only have complied with the standard for enrichment required by law, but in addition thereto they have added Vitamin D and calcium which, although not required by law, do appear perhaps to add some food value to the bread.

I presume, since it is conceded that the formula for the bread used by Regan Brothers complies in every respect with the standard prescribed by law, and in addition thereto, contains other ingredients which add to the general food value of the product, it is difficult to see that they have violated either section 51-1201 of the 1943 Revised Code or chapter 177 of the Session Laws of 1945. Neither can we see that other bread producers have any grounds for complaint since their products do not contain all of the ingredients contained in the bread produced by the Regan Brothers, and it would seem that the Regan Brothers would have a right to acquaint the public with the kind of product they offer for sale.

Respectfully submitted,
NELS G. JOHNSON
Attorney General

By P. O. SATHRE
Assistant Attorney General

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