

Held in Room 423-S, at the Statehouse at 9:00 a. m./~~p. m.~~, on March 26, 19 81.

All members were present except:

The next meeting of the Committee will be held at 9:00 a. m./~~p. m.~~, on March 30, 19 81.

These minutes of the meeting held on March 26, 19 81 were considered, corrected and approved.



Chairman

The conferees appearing before the Committee were:

- Senator Dan Thiessen
- Dave Bennett - Kansas Livestock Association
- Doyle Talkington - Kansas Pork Producers
- John Miller - Committee of Kansas Farm Organizations
- Fred Germann - Pork producer, Dwight, Kansas
- David Martin
- Bernard Hansen - President, Kansas Meat Processors Association
- Scott Goultrie - Theis Packing Plant
- Joe Hollowell - Department of Health and Environment
- Jim Pyle - Department of Health and Environment
- Bill Duitsman - Secretary of the State Board of Agriculture
- Larry Woodson - Director, Meat & Poultry Inspection Div., SBOA

Chairman Beezley called the meeting to order.

SB 318 & SB 319 - concerning water-added pork.

Senator Dan Thiessen stated that these were companion bills. Due to processing and curage there was shrinkage in pork. He would like to see Kansas conform to federal law for a more tender and succulent product. He pointed out on lines 66, 67, and 68, in SB 318, the following words, "This subsection does not apply to any cured or smoked pork product by reason of its containing added water." Also SB 319, lines 139 and 140, the following words, "except that this provision does not apply to any cured or smoked pork product by reason of its containing added water."

Dave Bennett, Kansas Livestock Association, passed out hams to show how the labeling reads. The label says, "water added". If the ham contains above 10% water, the label has to say how much water is contained.

Doyle Talkington, Kansas Pork Producers testified in favor of SB 318 & SB 319. He feels that the Kansas consumer should have a choice in deciding what they would like to purchase. Kansas is the only state that does not allow water added hams to be sold. The Pork Producers would like to see this antiquated law changed. (See Attachment I)

John Miller, Committee of Kansas Farm Organizations stated that his organization does support these two bills; they support all types of industry in Kansas and asked the committee to give favorable consideration to these bills.

Fred Germann, a pork producer from Dwight, Kansas stated that this is a 120 million dollar industry in Kansas. He feels the pork producers are being penalized for not having more of the final product sold in Kansas. He would like to see our laws updated to comply with federal regulations. (See Attachment II). He asked the committee to support both these bills.

Chairman Beezley told the committee that he had testimony from The Kansas Food Dealers (See Attachment III), The Kansas Restaurant Association, (See Attachment IV) and Mr. Richard Morse. (V) These representatives could not be here today but left their testimony to be read by the committee.

David Martin, concerned citizen spoke in opposition to this bill. He said that Kansas is actually in conformity with the federal law. He feels that allowing a greater percentage of water to ham is not benefiting the consumer. On being questioned by a committee member, Mr. Martin stated he is a medical student interested in public health and has done much research on this issue.

Bernard Hansen, President, Kansas Meat Processors Association, stated that Kansas are pretty smart. They will still be given the choice of dry ham if the state allows the water added product. Enforcement would be at the production point by the Kansas Meat Inspection Department. He urged support of both bills. " VI "

Scott Goultrie, Theis Packing Plant stated that he thought people would use the wet ham for baking and the dry for sandwiches. There is a use for both types of ham in the state. Let the consumers make their choice. He would like to see these bills passed. More hams would not mean higher prices. Supply and demand would be met.

Joe Hollowell, Dept. of Health and Environment said that his department checks the hams in retail stores and as long as the label reads correctly, the new law would not affect their jobs any differently.

Jim Pyle, Department of Health and Environment said that violation of the law now is a Class C misdemeanor. They are enforcing the law everyday.

Bill Duitsman, Secretary of the State Board of Agriculture, gave support to both bills. His agency will go along with whatever decision the committee makes.

Larry Woodson, Director, Meat and Poultry Inspection Division, SBOA, said that there would be no trouble with the labeling of hams. The State of Kansas designs the labels of hams produced in Kansas.

Chairman Beezley stated that testimony was concluded and asked for questions and comments from the Committee. Some of the comments were, more pork or a better pork product; let's help the processors of Kansas, not deter economic progress; do we want economic development in Kansas or not. Rep. Smith moved that SB 318 & SB 319 be passed. Rep. Fuller gave a second to the motion. Rep. Leach moved to make a substitute motion to table SB 318 & SB 319. This motion failed for lack of a second. Rep. Leach made a conceptual motion to limit the addition of more than 10% water in hams sold in Kansas. Rep. Dempsey gave a second to the motion. The motion lost. Chairman Beezley asked for a vote on the original motion. The motion to pass SB 318 and SB 319 out of Committee favorably carried.

The meeting was adjourned.

Kansas Pork Producers Council

attachment 1

Chairman Beezley and Committee Members:

I am Doyle Talkington, Executive Vice President of the Kansas Pork Producers Council.

In the summer of 1980, the question was brought to the Kansas Pork Producers Council as to why water added hams could not be sold in Kansas.

The KPPC Legislative Committee, decided to do an investigation to find out more about water added hams. The laws in Kansas stated that "any pork product that added water beyond its original green weight was considered adulterated." After checking with the Kansas Meat and Poultry Inspection Department, it was found that Kansas is the only state that does not allow water added hams to be sold.

KPPC then sent out a survey to the Kansas Restaurant Association for their members to fill out. Another survey was sent to the Kansas Meat Processors, when the results were compiled members of the Restaurant Association voted 2 to 1 in favor of water added hams. The Kansas Meat Processors were also in favor of a water added ham. Many people believe after tasting a ham with water added that it is tender, juicier, and cooks quicker than a dry ham. The meat packing plants were also very interested in changing the Kansas law so water added hams could be sold. Two-thirds of all hams produced by Rodeo Meats is water added, and yet all their water added hams are shipped out of state.

Restaurants have been reprimanded for serving water added hams in Kansas, not only on our borders but throughout the state. Restaurant managers are breaking the

law because they are not aware that water added hams cannot be served in Kansas, or they take the risk of being caught because the lower price of the cured product is worth it.

In late summer KPPC called a meeting of organizations including: Kansas Livestock Association, Kansas Meat Processors, Kansas Restaurant Associations, State Board of Agriculture Meat and Poultry Inspection, meat packing plants, and pork producers to find out their true feelings and if they were opposed to water added hams, or whether our laws were outdated. During this meeting we concluded that our laws were almost ancient history. These associations believed our regulations concerning water added hams should be updated to be in line with federal regulations. Federal regulations allow a 10% water added pork product and more providing the amount of water added is stamped on the package.

Water added hams are normally sold at a lesser price than dry hams. If water added hams were allowed to be sold in Kansas more Kansas pork would stay within the boundaries of the state. Restaurants would not have to be concerned with breaking the law when serving pork products. Chain store restaurants would not have to be concerned when shipping water added pork from their out of state warehouse that they would be reprimanded for using a pork product that is not allowed in Kansas. Consumers would have a choice at the meat case and their taste buds and budgets would dictate whether they prefer water added ham or a dry ham.

Economically pork producers, meat packers and processors, restaurants, and consumers in Kansas would be on more equitable terms with other states if water added pork products could be sold. Consumers will decide when a product has too much water. Government should not try to make all the decisions for consumers.

The Kansas Pork Producers Council supports Senate Bills 318 and 319, and we believe consumers should have a choice. More dollars of revenue would stay within the state if water added hams could be sold, pork producers could sell more pork in

Kansas. It is time to change our antiquated statutes and allow water added pork products to be sold in Kansas.

Respectfully submitted,

Doyle Talkington

Doyle Talkington
Executive Vice President

Attachment II

Kansas Pork Producers Council

Chairman Beezley and Committee Members:

I am Fred Germann, a pork producer from Dwight, Kansas.

As a pork producer and part of a more than \$120 million dollar industry in Kansas, I support Senate Bill 318 and 319, amending the laws to allow water added hams to be sold.

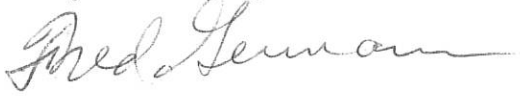
Pork Producers are being penalized by not having more of the final product sold within the borders of Kansas. Since it is practically impossible to enforce the restrictions on water added hams, our laws should be updated so that they are in line with the Federal regulations. This will allow more of good Kansas pork to be sold to restaurants, hotels and food chains within the state.

Water added hams could possibly create more interest in a pork packing plant being located in Kansas. More Kansas hams would be purchased if they are at a lesser price than the present dry hams, which is saying that we want to give the consumer a choice between the water added hams and a dry ham. As a producer I feel that it is important that our labeling be uniform with that of the Federal regulations.

Water added hams will allow more flexibility within the marketing system in Kansas. As a pork producer we'll sell more of our product within the state, help our packing plants, restaurants, and give the consumer a choice. I think it is time we amend our laws so they are coordinated with Federal regulations and other states.

As a pork producer I encourage your support of Senate Bill 318 and 319.

Respectfully submitted,

A handwritten signature in cursive script that reads "Fred Germann". The signature is written in dark ink and is positioned above the printed name.

Fred Germann

Kansas Food Dealers' Association, Inc.

JAMES G. SHEEHAN, EXECUTIVE DIRECTOR
2809 WEST 47th STREET • SHAWNEE MISSION, KANSAS 66205
PHONE (913) 384-3838

OFFICERS

- STAN HAYES, PRES.
MANHATTAN
- BILL WEST, VICE-PRES.
ABILENE
- JIM SHEEHAN
EXEC. DIRECTOR
SHAWNEE MISSION

March 26, 1981

HOUSE AGRICULTURE AND LIVESTOCK COMMITTEE SB 318 and SB 319

DIRECTORS

- J.R. WAYMIRE
LEAVENWORTH
- VIC STANLEY
BLUE RAPIDS
- LEONARD McKINZIE
OVERLAND PARK
- REX SUTHERLAND
PAOLA
- CHARLES BALLOU
CHANUTE
- DONALD CALL
CEDARVALE
- JOE ENSLINGER
WICHITA
- C. V. COMBS
WICHITA
- ROY FRIESEN
SYRACUSE
- JOE WHITE
KINGMAN
- JOHN DONELAN
COLBY
- DELL KLEMA
RUSSELL

Since I am unable to be with you personally this morning I wish to express in writing our support of SB 318 and SB 319. I am Director of Governmental Affairs for the Kansas Food Dealers Association, Our membership consists of over 1500 members, and includes retail food stores, wholesalers, manufacturers, distributors and suppliers of food products throughout the entire State of Kansas

DIRECTORS AT LARGE

- RUSTY SPRINGER
LAWRENCE
- JOHN SCOTT
SHAWNEE MISSION
- GLEN BREWER
PITTSBURG

We believe passage of SB 318 and SB 319 would put Kansas in conformity with the other 49 states which presently permit the sale of "water-cured hams". It has always been our theory that Kansas consumers should be permitted to buy the same products in Kansas as they can buy in surrounding states. It is not illegal to consume these products, so we believe our citizens should be permitted to purchase them in Kansas also.

HONORARY DIRECTORS

- DAVID (BUS) STILES
HERINGTON
- PAUL DART
GARDEN CITY

Concerning adoption of rules and regulations by the State Department of Health and Environment permitting these products, if they are in compliance with federal standards it will be of benefit to our suppliers, and we endorse both measures being considered by this committee today.

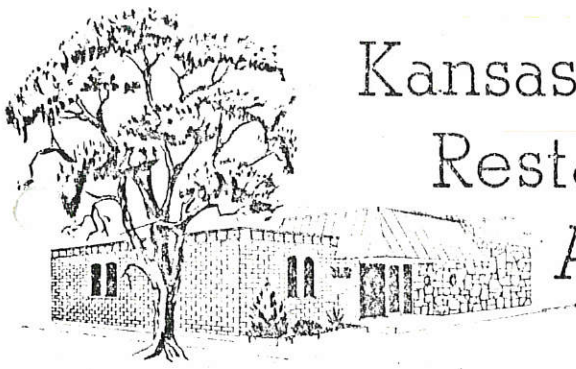
If I can answer questions, please feel free to contact me next week. Thank you for consideration of our comments.

Frances Kastner, Director of Governmental Affairs for KFDA
3310 West 7th # 2, Topeka, Kansas 66606 (913) 232-3310

AFFILIATED WITH -- -- NATIONAL ASSOCIATION OF RETAIL GROCERS (NARGUS)
FOOD INDUSTRY ASSOCIATION EXECUTIVES

OWNERS AND PUBLISHERS OF THE "KANSAS FOOD DEALERS BULLETIN."
THE OFFICIAL PUBLICATION OF THE KANSAS FOOD DEALERS ASSOCIATION INC.

Kansas Restaurant Association



359 South Hydraulic, Wichita Kansas 67211, (316) 267-8383
February 26, 1981

Mr. Chairman and Members of the Committee:

My name is Al Ward. I am a Topeka restaurant operator and I am here today representing the 1200 statewide members of the Kansas Restaurant Assn.

Last year the Kansas Pork Producers Association asked our association if we would be interested in polling our membership to see how they felt about water-added hams.

By almost a two to one margin they said they would use water-added hams if they were available. Many said they would even be willing to pay a higher price for the water-added product.

They also stated they felt more hams would be sold if water-added hams were available to them.

Some of our members did not know it was illegal in Kansas to sell the more tender, the easier to cook, the more attractive to serve water-added product since they were being offered the product from packers outside of Kansas.

Some have had the unpleasant and unprofitable experience of having hams in their coolers confiscated and they too, didn't even know they were breaking Kansas law.

In our business it is almost impossible to serve a grilled ham steak that is not dry when served to the customer.

We are not interested in serving the up to 25% water-added product the federal government now allows but we know we can serve a more flavorful, tender and attractive product by using about a 8 to 10% water-added ham.

Thank you.

Statement of Richard L. D. Morse

Before Senate Committee on Agriculture and Small Business

On: Senate Bill Nos. 318 and 319 to relieve certain restrictions on watering of ham.

Chairman Kerr and Committee members, I appreciate this opportunity to present a consumer's perspective on these two bills. Although I speak for myself, I feel you should know that I have lived in Kansas for over 25 years, during which time I have been head of the Department of Family Economics at Kansas State University, was recently re-elected to serve my second three-year term on the Board of Directors of Consumers Union, publisher of Consumer Reports, and I am a member of the USDA Advisory Committee on Meat and Poultry Inspection.

I may have met some of you before when I testified on bills related to the upholding of standards of identity for beef. (I have taken the position that meat is known to be meat and should continue to be all meat without additives or imitation products.) I have also testified in opposition to changing Kansas laws to permit the substitution of vegetable fats in dairy products.

As you might surmise, therefore, I am not enthusiastic about the provision of these bills to prohibit the health department from considering water as an adulterant when added to any cured or smoked pork product (under SB 319), and likewise under SB 318 to remove it as part of Kansas law governing meat inspection by the Board of Agriculture. I tend to be a conservative traditionalist who believes that a product should be sold and labeled for what it is; and in this case, the product is ham, not dry ham or watered ham, but ham.

The proponents have argued that consumers prefer watered hams, and they may be correct. As a Kansan, I know that the hams we buy and consume are of good quality. Perhaps there is a better product that I have been denied by Kansas law. Perhaps the addition of water to hams is not an act of adulteration, but the production of a new product, called watered ham. Ham has been defined; water has been defined. The two standards of identity could be combined as currently authorized by USDA and labeled:

HAM AND 25% WATER

Of course, the exact percentage appearing on the label would be the percent of water added.

The proponents have argued that the consumer should be "Free to Choose". This is the current terminology for the consumers "Right to Choose" set forth by President Kennedy. But if the benefits of freedom to choose are to be fully realized, they should be dissociated from the temptation to invoke freedom to confuse. Specifically, in this case, I believe every Kansas consumer knows what ham is. But I doubt that but a few would know what "ham with water added" means in terms of the amount of water added. Thus, I would propose that the committee give serious consideration to an additional condition which reads as underlined: "This subsection does not apply to any cured or smoked pork product by reason of its containing added water if the percent added water is conspicuously labeled."

I would expect such percentage labeling to apply whether the percent is less than or greater than 10%.

In closing I want to recognize the proponents' argument that Kansas is alone in its restrictions on watered hams. I am proud of Kansas for being different, when there is good reason for being different. There are times when we should not yield to the pressures of Washington, California or any other state or government. We are indebted to the leadership of Evan Wright who is here today in spirit, and I applaud the Department of Health and Environment for continuing to uphold his high standards, as uncomfortable at times as they may be.

Thank you.



FOODS, INC. • QUALITY MEATS

P.O. Box 435 • ALMA, KANSAS • 66401
Tel. 913 • 765 • 3396

From: Bernard Hansen
Flint Hills Foods, Inc.
Box 435
Alma, Kansas 66401

To: House Agriculture Committee

Subject: Testifying for S.B. 319 "Water Added Hams" on behalf of
Kansas Association of Meat Processors

The Kansas Association of Meat Processors voted unanimously on October 12, 1980, to approve suitable legislation to permit water-added hams to be manufactured and sold in Kansas. I have worked with the Kansas Pork Producers Council since this time on this subject and wish, at this time, to support S.B. 319.

There are several reasons that we feel provide the merit for this support. I will list the following reasons for this purpose:

- 1) A survey with the Kansas Restaurant Association members proved a consumer demand in Kansas.
- 2) Comments were received that the dry type hams many times are "too dry" for several types of restaurant use.
- 3) In other states, purveyors, such as our plant in Kansas, report 70% to 75% of their sales of hams are in the "water added product".
- 4) Consumers will continue to be offered the dry ham, thus giving them a wider more economic choice, they can make the decision which to use.
- 5) Many, many water added products are being sold within the state of Kansas at the present by out of state suppliers. This "no water" part of the law is very abused and very difficult to enforce. This problem creates an unfair business disadvantage to our members, who want and do abide by the laws.
- 6) Kansas officials could easily enforce the new "water added laws", because this allows the controls to be used at the production point versus the end user point. Enforcement at the production point is already being done on "dry type hams" by our very responsible Kansas Meat Inspection Department.



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Page Two

- 7) Kansas Meat Inspection laws are to be equal to Federal Meat Inspection laws, but we are the only state in the U.S. that has the law against "water added hams".
- 8) Through passage of S.B. 319, the Kansas Pork Producers will be given new and more marketing opportunities and be put on an equal basis to producers in other states.

We feel these reasons require our Association's support of S.B. 319 and we appreciate your help and support on this bill.

Respectfully yours,

A handwritten signature in cursive script that reads "Bernard L. Hansen".

Bernard L. Hansen



United States
Department of
Agriculture

Office of
General
Counsel

Washington,
D.C.
20250

DEC 5 1980

RECEIVED
DEC 17 1980

U.S. Attorney
Topeka, Kansas

DEC 17 1980

Honorable James P. Buchele
United States Attorney
44 Quincey
Topeka, Kansas 66683

Attention: Mary K. Briscoe
Assistant United States Attorney

Dear Mr. Buchele:

This letter is in response to your inquiries concerning the Department of Agriculture's current policy concerning the marketing of hams with water added and changes which have been effectuated recently in that policy.

Section 319.104(c) of the Federal meat inspection regulations (9 CFR 319.104(c)) currently provides a standard for specified cured, water added pork products. These products may "contain added water not in excess of ten percent of the weight of the fresh, uncured products" and "shall bear on their labels the term 'Water Added,' as a part of the product name." As the memorandum from Robert Hibbert dated April 18, 1980 (enclosed with your letter) indicates, however, the Department will approve labels for products containing more than ten percent water, if the product name indicates the amount of water added. While the phrases "Ham and 25% water added" and "Ham and 25% water" were used in the memorandum by Mr. Hibbert merely as examples of acceptable labeling, the agency will approve labels for the specified products containing 25 percent added water.

The Department's current policy concerning the approval of labels for products containing in excess of ten percent water added is the result of litigation in which the Department has been involved since the promulgation of 9 CFR 319.104(c). The following brief review of the events before and since the promulgation of the regulation should clarify the development of our position.

In 1962, the United States Court of Appeals for the District of Columbia held that a Departmental regulation requiring smoked hams containing added moisture to be labeled "Imitation Ham" was false and deceptive and, therefore, products labeled in accordance with the regulation would be misbranded. Armour v. Freeman, 304 F.2d 404 (D.C. Cir.), cert. denied, 370 U.S. 920 (1962). The Department subsequently promulgated a rule regarding the labeling of ham and other specified pork products containing added water which is currently contained in section 319.104(c).

Following promulgation of the regulation, officials of the Department's Food, Safety and Quality Service (FSQS) indicated their belief that hams containing added water in excess of the ten percent limitation provided in the standard would be economically adulterated within the meaning of section 1(m)(8) of the Federal Meat Inspection Act (21 U.S.C. 601(m)(8)) and, based upon this conclusion, withheld approval of labels for hams containing moisture in excess of the ten percent permitted by the standard. An August 8, 1977, FSQS bulletin (MPI 75-122) delineated the agency's policy that labeling would not be approved for cuts of meat, including hams, which contained water or added substances in excess of the amount permitted by the Federal meat inspection regulations. On November 15, 1977, FSQS notified producers of ham containing water in excess of the amount permitted by the regulation (which were being labeled as "Imitation Ham") that approvals of such labels were rescinded.

On November 8, 1977, after FSQS had denied approval of labels proposed by members of the Pacific Coast Meat Association (PCMA) for hams containing up to 20 percent added water, PCMA and several members of the association sued to enjoin the Department from denying approval of their labels. They also sought a declaratory judgment that hams with up to 20 percent water added must be labeled 'imitation hams' under the provisions of the Federal Meat Act, 21 U.S.C. 601(n)(3) or an order requiring the Department of Agriculture to initiate proceedings for the promulgation of a rule specifying alternative labeling for imitation ham, such as 'Ham, Up to 20 Percent Water Added'. Based upon the arguments presented by the PCMA plaintiffs, FSQS officials decided to re-examine the ten percent added water limitation. In July 1978, the Department, in conjunction with the Department of Justice, negotiated a settlement of the PCMA case. The settlement essentially provided that the agency would commence a rulemaking proceeding concerning the added water limitation specified in the regulations and, in the interim, the agency would approve labels for hams and other specified cured pork products with up to 20 percent water added.

As a result of this settlement, FSQS has approved labels with pork products containing up to 20 percent water added. As indicated in Mr. Hibbert's April memorandum, the Department also will approve labels for the specified pork products containing 25 percent water added. Consistent with the PCMA settlement, too, the Department intends to initiate rulemaking to control the added moisture in certain products, including hams. When such rulemaking proceeding is commenced, the Department's proposal will be published for comment in the Federal Register.

I regret the delay in our response to your inquiry. Ms. Harris, an attorney on my staff, was unsuccessful in reaching you by telephone to discuss the matter. I understand, however, that she recently did speak with Mary K. Briscoe of your office concerning your inquiry.

If you have any further questions concerning the Department's policy regarding water-added hams, I will be glad to provide additional clarification.

Sincerely,

A handwritten signature in cursive script that reads "Daniel Marcus". The signature is written in dark ink and is positioned above the typed name.

DANIEL MARCUS
General Counsel

Copy to each Agency
1963
F.Y.

Branch Chiefs

APR 13 1963

R. C. Hibbert, Robert G. Hill et al
Acting Director
WFLD



Cured Pork Products with more than 10% Added Water

Present Agency policy permits more than 10% water to be added to cured pork products identified in 31^o.104 of the meat inspection regulations. However, the product name of these products must include the amount of water added, for example, "Lam and 25% water added." or "Lam and 25% water." Other basic requirements identified in 31^o.104(d) for "Water Added" products should be followed. However, if these products are not placed in a consumer size package they must be marked the full length of the product with terms expressing not only that they are water added products but also expressing the amount of water added, e.g., "25% water added." This will differentiate these products from the "Water Added" products. The policy book should be changed to incorporate this policy.