

March 18, 1937

Mr. Robert A. Green, Director
Arizona State Laboratory
University of Arizona
Tucson, Arizona

Dear Bob:

I have your letter of March 16th, 1937, relative to the matter of prosecuting violators of the Pure Food Law, and the amount of proof necessary to sustain a conviction for using sulphites and other preservatives on meats. I take it that you are proceeding under Section 2711, and using Section 2702 as your definition of "adulteration", the particular portion thereof reading as follows:

" * * * or if mixed, colored, powdered, coated or stained, whereby damage or inferiority is concealed."

You will notice in the portion of the statute quoted there must be a sufficient amount of adulterant in the food to conceal either damage or inferiority. For the purpose of prosecuting under that particular section of the statute you will have to show that the food or meat contained an adulterant, and that it contained it in a sufficient quantity to conceal damage or inferiority.

The question you ask deals with the degree of proof. It is impossible for me to answer it other than as I have above, for the reason that I am not acquainted with the effect sulphites or any other adulterant might have on meat. You would be in a better position to determine whether you would have to make quantitative tests to sustain your complaint against the violator of the act, for the reason that you know whether a slight trace of it might conceal damage or inferiority or whether it might require a larger amount. In any event, it would have to be shown that the meat contained an adulterant in a sufficient quantity to conceal the

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damage or inferiority. It may well be that meat may contain an adulterant in a very minute quantity and still not be sufficient to conceal damage or inferiority, and on the other hand it may be sufficient to conceal damage or inferiority. This is a matter of fact that you are in a better position to determine than we.

If you can say or rather testify from the results of your qualitative analysis that the food or meat contains an adulterant in sufficient quantity to conceal damage or inferiority, then it will not be necessary for you to make quantitative tests, but if you cannot determine from your qualitative tests that the food or meat contains an amount of adulterant sufficient to conceal damage or inferiority, then it will be necessary for you to determine what amount of the adulterant would be necessary to conceal damage or inferiority and make quantitative tests to determine whether or not the food or meat contained an amount sufficient to do so.

Yours very truly,

JOE CONWAY
Attorney General

EDWARD P. CLINE
Assistant Attorney General

E. G. FRAZIER
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Attorney General