**To: Sheldon R. Jones**

**Arizona Department of Agriculture**

**March 16, 2000**
**Re: Importation of Citrus for Packing in Arizona**
**I00-004**
**(R99-018)**

## Question Presented

You have asked whether the Arizona Department of Agriculture ("Department") can prohibit the importation of citrus that does not meet Arizona's citrus grades and standards when the citrus is brought to Arizona for packing in Arizona facilities to be shipped out of state for sale.

## Summary Answer

Because the Department can adequately protect Arizona's interests by inspecting citrus for compliance with Arizona's standards when the citrus is packed in this State, the Department cannot require that citrus meet Arizona's standards before it is imported for packing. This Opinion does not in any way limit the Department's authority to prohibit the entry of citrus because of health or safety concerns.

## Background

Citrus produced or sold in Arizona is subject to a system of uniform grades and standards that is intended to enhance its quality and marketability. Arizona Revised Statutes ("A.R.S.") §§ 3-441 to -466. According to your opinion request, several citrus importers wanted to import citrus into Arizona to be processed and packed in established Arizona facilities for subsequent sale out of state. Your letter indicated that the Department would have inspected the citrus at the border to ensure that it did not harbor plant pests or diseases that would threaten Arizona agriculture. However, the Department did not intend to inspect this citrus to ensure that it conformed to Arizona's uniform grades and standards before it reached the packing facilities. Instead, the Department intended to do so during the packing process.

According to the Department, citrus grown and harvested in several different states is frequently packed in one central location. The packing process involves washing, grading, and packing citrus by size in cartons. Before the citrus is packed, it is generally in bulk and neither washed nor graded. The State's standardization and inspection processes are integrated into the packing process.

## Analysis

Arizona law prohibits the packing, selling, moving, loading, or shipping of citrus that does not conform to the uniform grades and standards regardless of whether the citrus is moving in domestic, interstate, or foreign commerce. A.R.S. § 3-461(A).[(1)] It also prohibits the importation for sale within the State of citrus that fails to meet Arizona's grades and standards. A.R.S. § 3-458(A). However, the statutes do not prevent a citrus grower "from selling or delivering . . . fruit unpacked and unmarked, as part of the crop in bulk, to a packer for grading, packing or storage." A.R.S. § 3-460(1).

Arizona's laws governing the importation of citrus must be interpreted in a manner consistent

with the Constitution. *See State v. Getz,* 189 Ariz. 561, 565, 944 P.2d 503, 507 (1997) (when possible, statutes should be interpreted in a manner that is constitutional). The Commerce Clause gives Congress the exclusive authority "[t]o regulate Commerce with foreign nations, and among the several States." U.S. Const. Art. I, § 8, cl. 3. Even when Congress has not acted, the United States Constitution limits the extent to which state regulation can impact interstate and foreign commerce. *Wardair Canada, Inc. v. Florida Dep't of Revenue*, 477 U.S. 1, 7-8 (1986); *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 350 (1977).

Congress has not enacted any legislation that would preempt a state regulatory scheme requiring that out-of-state citrus comply with the State's uniform grades and standards before it could be imported into the State for packing. In the absence of such preemptive legislation, the United States Supreme Court applies two tests to determine whether the Commerce Clause invalidates a state regulatory scheme.(2) First, a state scheme is per se invalid under the Commerce Clause if it directly regulates or discriminates against interstate commerce or has the effect of favoring in-state economic interests over out-of-state ones. *Healy v. Beer Inst.*, 491 U.S. 324, 337 (1989). Arizona's citrus statutes are facially valid under this test because they apply to all citrus, regardless of its origin or its movement in domestic, interstate, or foreign commerce, and they do not discriminate against interstate commerce or favor in-state economic interests over out-of-state interests. *See* A.R.S. §§ 3-461(A) (requiring all citrus that is packed in Arizona, regardless of its origin, to meet the same standards); -458(C) (permitting citrus that has been grown in a State that has citrus standards equivalent to Arizona's, to be transported into and sold in Arizona upon proof of compliance with the other state's standards).(3)

Under the second test, a state regulatory scheme "that regulates even-handedly to effectuate a legitimate local public interest" and that has only incidental effects on interstate commerce may nevertheless be invalid if the burden that it imposes on interstate commerce "is clearly excessive in relation to the putative local benefits." *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). The extent of the burden that will be tolerated under this test depends upon the nature of the local interest involved and whether the State could promote the interest as effectively while imposing a lesser impact on interstate commerce. *Id.* at 142.

The purpose of Arizona's citrus statutes is to protect the reputation and marketability of Arizona-grown citrus. 1933 Ariz. Sess. Laws ch. 70, § 2; 1992 Ariz. Sess. Laws ch. 354, § 4. The Supreme Court has recognized that protecting and enhancing the reputation of growers within a State is a legitimate state interest. *Pike*, 397 U.S. at 143; *see also Sligh v. Kirkwood*, 237 U.S. 52, 61 (1915). In *Pike,* however, the Court ruled unconstitutional an order issued under Arizona's fruit and vegetable standardization laws that prohibited a company that grew cantaloupes in Arizona from packing the cantaloupes in its California packing plant. To comply with the order, the grower would have needed to invest $200,000 to build another packing plant in Arizona. *Id.* at 144-45. The Court observed that state statutes that "requir[ed] business operations to be performed in the home State that could more efficiently be performed elsewhere" were per se invalid, even when the State was pursuing "a clearly legitimate local interest." *Id.* at 145. It therefore concluded that the restriction the order placed upon the grower's allocation of its interstate resources outweighed the local benefit of advancing the reputation of Arizona's growers by requiring that Arizona-grown cantaloupes be packed in Arizona. *Id.* at 146.

According to your opinion request, although the Department did not intend to inspect citrus for compliance with Arizona's standards before the citrus entered the State for packing, it planned to do so when the citrus was packed. The Department's approach properly recognizes the need to protect the State's legitimate interests and, at the same time, avoid imposing unnecessary burdens on interstate commerce. According to the Department, any citrus packed in Arizona is

graded and sorted to comply with Arizona's standards, and processes to ensure compliance with these standards are an integral part of the packing process in Arizona. Requiring citrus imported for packing in Arizona to meet Arizona's standards before it enters the State means the citrus would have to be sorted and graded to meet Arizona's standards before it crosses the border. However, this additional work prior to packing in Arizona could be avoided if the imported citrus -- like citrus grown in-state -- is graded and sorted to meet Arizona's standards when it is packed.

In *Pike*, the Court prohibited Arizona from requiring work to be done in state that could be done more efficiently elsewhere. *Pike,* 397 at 142. Here, prohibiting the entry of certain citrus for packing in Arizona would require work to be done out of state that could be done more efficiently in Arizona. Although the State has a legitimate interest in protecting the reputation and marketability of Arizona-grown citrus, the State cannot prohibit the importation of citrus for packing because it does not meet Arizona's standards when the citrus can be brought into compliance with Arizona's standards when it is packed. Instead, the Department is correct in allowing the entry of the citrus and ensuring it meets Arizona's standards when it is packed.

## Conclusion

Because the Department can protect the State's interests by ensuring that citrus complies with Arizona's standards when it is packed, the Department cannot prohibit the importation of citrus for packing in Arizona because the citrus fails to satisfy Arizona citrus grades and standards. This does not limit the Department's ability to limit the entry of citrus for health or safety reasons.

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Janet Napolitano
Attorney General

1. That statute provides in relevant part: § 3-461. Unlawful packing or sale of fruit
A. It is unlawful to pack or cause to be packed, to sell or offer for sale, to deliver for shipment, load, ship or transport for shipment, whether in domestic, interstate or foreign commerce, citrus fruit which does not conform to this article.

2. The Court has not clearly established a test for determining the limits that the *foreign* commerce clause imposes on state regulations in the absence of congressional action, but it has suggested that the test is stricter than the test that applies when only interstate commerce is impacted. *See Reeves, Inc. v. Stake*, 447 U.S. 429, 438 n.9 (1980) (noting that "Commerce Clause scrutiny may well be more rigorous when a restraint on foreign commerce is alleged") (citation omitted). Consequently, a state regulatory scheme that is invalid under the interstate commerce clause would also be invalid under the foreign commerce clause.

3. *Cf. Hunt,* 432 U.S. at 337 (finding that a North Carolina statute that "required all closed containers of apples shipped into or sold in the State to display either the applicable USDA grade or none at all" was, in practical effect, economic protectionism that favored North Carolina apples and that unconstitutionally discriminated against Washington State apples, which met standards higher than those that the USDA had established); *Dean Milk Co. v. City of Madison,* 340 U.S. 349, 350 (1951) (finding that a city ordinance that made it "unlawful to sell any milk as pasteurized unless it ha[d] been processed and bottled at an approved pasteurization plant within a radius of five miles from the central square of Madison" plainly discriminated against interstate commerce).

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