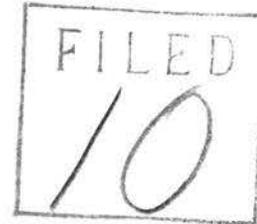


U. S. SEED LAW: various questions relating to enforcement.

11-21
November 18, 1935.



Honorable J. C. Breshears,
Commissioner, Department of Agriculture,
Jefferson City, Missouri.

Dear Sir:

We wish to acknowledge your letter of recent date requesting an opinion wherein you state as follows:

"Because of the attitude of some County Prosecuting Attorneys, and our lack of legal interpretation, we pray you for your opinion on the following, relating to the 'uniform seed law' in Article 16 of Chapter 87, R. S. Missouri, 1929:

"(a) On finding or on obtaining proof of the sale or offering for sale of unlabeled field seed, does the Commissioner or his agent have the right and power to swear out a complaint against the alleged offender, without holding a hearing?

"(b) What is the meaning of the word 'formal complaint', in the concluding sentence of Section 12611?

"(c) Has a Prosecuting Attorney the right and jurisdiction to file a complaint on his own initiative against any person that he considers has disobeyed the seed law by his (a) filing on his own official complaint or (b) on the sworn complaint of any citizen?

"(d) Or must a hearing be held by the Commissioner or his agent before any Prosecuting Attorney or citizen can file a complaint in court under this law?

"(e) Is an analysis required under this law, if and when the complaint is based on a non-labeling or other reason in which a result of analysis is not involved?

"(f) Is a wholesale seedsman selling recleaned field seeds to another wholesale seedsman required to label any and all such lots of field seeds?"

(a)

Section 12610 of Article 16, Chapter 87, R. S. Mo. 1929, defines what constitutes a violation under the "uniform seed" law as follows:

"It shall be unlawful for any person, firm or corporation to sell, offer or expose for sale within this state any agricultural seeds or mixtures of agricultural seeds, as defined in this article, for seeding purposes within this state without complying with the requirements of this article, or to falsely mark or label any agricultural seeds, or to interfere in any way with the said board or its agents in the discharge of the duties herein named."

Section 12611, R. S. Mo. 1929, provides for prosecutions of violations of the "uniform seed" law as follows:

"Every violation of the provisions of this article shall be deemed a misdemeanor punishable by a fine not exceeding one hundred dollars, and if the said board shall find, upon examination, analysis or test, that any person, firm or corporation has violated any of the provisions of this article, the board may institute proceedings in a court of competent jurisdiction to have such person, firm or corporation convicted therefor, or the said board, in its discretion, may report the results of

such examination to the attorney-general, together with sworn statement of the analyst, duly acknowledged, and such other evidence of said violation as said board shall deem necessary: Provided, however, that no prosecution under this article shall be instituted except in the manner following: When the said board or its agents find that the article has been violated, they shall give notice to the person or firm in whose hands the seed was found, designating a time and place for a hearing before an agent, officer or member of said board. This hearing shall be private, and the person or firm involved shall have the right to introduce evidence, either in person, by agent or attorney. If, after said hearing, or without such hearing, in case said person fails or refuses to appear, the said board decides that evidence warrants prosecution, the board shall proceed as herein provided. It shall be the duty of the attorney-general, or in his discretion he may act through the prosecuting attorney of the county or the city attorney of the city in which said violation occurred, to institute proceedings at once against the person or persons, firms or corporations charged with such violation: Provided further, that the prosecuting attorney of any county or the city attorney of any city in which formal complaint arises may file proceedings under this article."

We direct your attention to that part of the above section which provides:

" * * * that no prosecution under this article shall be instituted except in the manner following: When the said board or its agents find that the article has been violated, they shall give notice to the person or firm in whose hands the seed was found, designating a time and

place for a hearing before an agent, officer or member of said board. This hearing shall be private * * *."

From the foregoing, we are of the opinion that neither the commissioner nor his agent has the right or power to swear out a complaint against the alleged offender without first holding a hearing.

(b)

We are of the opinion that the term "formal complaint" as used in the above section means a formal allegation or charge against the party made or presented to the appropriate officer, in this instance the prosecuting attorney, that the provisions of Article 16 of Chapter 87, R. S. Mo. 1929, have been violated.

(c) and (d)

Section 3415, R. S. Mo. 1929, makes the following statement with reference to the power of a prosecuting attorney to proceed on his own initiative against a person or on the complaint of a citizen where a misdemeanor is charged:

"When any person has actual knowledge that any offense has been committed that may be prosecuted by information, he may make complaint, verified by his oath or affirmation, before any officer authorized to administer oaths, setting forth the offense as provided by this section, and file same with the justice of the peace having jurisdiction of the offense, or deliver same to the prosecuting attorney; and whenever the prosecuting attorney has knowledge, information or belief that an offense has been committed, cognizable by a justice of the peace in his county, or shall be informed thereof by complaint made and delivered to him as aforesaid, he shall forthwith file an information with a justice having jurisdiction of the offense, founded upon or accompanied by such complaint."

We are of the opinion that Section 3415, supra, is authority for the statement that it is not necessary that a hearing be held by the commissioner or his agent before any prosecuting attorney can file a complaint in court under this law. A prosecuting attorney may upon his own initiative, based on his knowledge, information and belief that an offense has been committed, file an information against the offending parties. A citizen having actual knowledge may file a formal complaint charging the commission of an offense. However, as stated in (a), supra, a complaint by the commissioner or his agent must be based upon a hearing and determination of the guilt or innocence of the parties charged with an offense.

(e)

Our courts have from an early date declared that no statute shall be construed in such manner as to be against reason. This rule of construction is expressed in the case of State v. McKay, 52 S. W. (2d) 229, l. c. 230, 227 Mo. App. 327, thus:

"A statute or ordinance will not be given a construction which will make it unreasonable or which will result in an absurdity."

To hold that an analysis is required under the law when the complaint is based on an offense in which a result of analysis is not involved would be unreasonable and result in an absurdity. We are of the opinion that under such circumstances an analysis is not necessary.

(f)

Section 12606, R. S. Mo. 1929, sets out the exemptions under the provisions of this article in the following language:

"Agricultural seeds or mixtures of same shall be exempt from the provisions of this article:

"(a) When possessed, exposed for sale or sold for food purposes only.

"(b) When sold to merchants to be recleaned before being sold or exposed for sale for seeding purposes.

"(c) When in store for the purpose of recleaning or not possessed, sold or offered for sale for seeding purposes within the state.

"(d) Agricultural seeds grown and sold by the grower thereof on his own premises: Provided, however, that said grower shall be responsible under this article for any representation he shall make in the sale of such agricultural seeds; and further provided, that if such agricultural seeds shall be advertised for sale or be delivered through a common carrier, then the grower as a seller shall be deemed to be a vendor, and said seed and seller shall be subject to all the requirements of this article: Provided, that nothing in this subsection (d) shall be interpreted as exempting any such grower from full liability in case of the sale of agricultural seeds containing Canada thistles."

In the case of Warrington v. Bobb, (Mo.) 56 S. W. (2d) 835, 1. c. 837, the court in holding that in the construction of a statute the object which the Legislature sought to attain, and the evil which it sought to remedy, may always be considered in ascertaining its intent and purpose, said:

"Of course our prime duty is to give effect to the legislative intent as expressed in the statute, and to that end there are many considerations to guide us. For instance, the object which the Legislature sought to attain by a statute, and the evil which it sought to remedy, may always be considered to ascertain its intent and purpose (Straughan v. Meyers, 268 Mo. 580, 187 S. W. 1159; Ross v. Ry. Co., 111 Mo. 18, 19 S. W. 541); the court may consider the expediency of the law in as-

certaining the legislative intent
(State ex rel. v. Regan, 317 Mo. 1216,
298 S. W. 747, 55 A. L. R. 773) * * *."

Section 12606, supra, makes no specific exemption as to wholesalers. However, it is evident from an examination of the provisions of Article 16 providing for a "uniform seed" law that it was the intention of the Legislature to protect its citizens from falsely marked or labeled agricultural seeds. Such protection, we believe, is for the ultimate consumer or planter, and hence we are of the opinion that if a wholesale seedsman sells recleaned seeds to another wholesale seedsman, he is not required to label such lots of field seeds.

Very truly yours,

GOVELL R. HEWITT,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

MW:HR