

COMMISSIONER OF AGRICULTURE:  
STATE BOARD OF HEALTH:

EMBARGO: Neither has authority to issue embargo prohibiting shipment of apples into this state.

January 18, 1936.

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



Dear Sir:

This will acknowledge receipt of your inquiry which is as follows:

"We have just received by telegram from Fred Merrill of Chillicothe, Missouri, the following information:

"'Western shippers of defrosted apples are undermining price schedules of Missouri grown apples by dumping this inferior quality fruit at low prices stop. Peddlers remove lids stamped to show low keeping quality and buyers are deceived by low prices stop. Nebraska reported to have placed embargo and Kansas is preparing same can we institute immediate proceedings to protect our market against dumping?'

"It appears that Missouri apple growers are going to suffer heavy financial loss, and we pray you to promptly advise us if Missouri has any law under which action can be taken concerning this matter. If so, under what section or sections, and what Department of our State Government is vested with such authority?"

We construe your question to be, has your department or the State Board of Health the authority to issue an embargo prohibiting the shipment into and sale within Missouri of apples which are of an inferior keeping quality, and which apples are later sold to the consuming public of Missouri without such consuming public knowing that such apples are of such grade, the apples, when sold to such consuming public, having been taken out of their original crates which show the true keeping quality thereof and being sold from other containers?

Laws of Missouri, 1933, page 166, abolishes the State Board of Agriculture and a number of other boards and transfers their duties to the Commissioner of Agriculture, and the duties of such abolished boards are continued in the State Department of Agriculture and the Commissioner of Agriculture.

Under the provisions of the Missouri Plant Law, Section 12378, R. S. Mo. 1929, provides that the board may establish a quarantine and make rules and regulations pertaining thereto.

Section 12379 provides that when the board finds that there exists in the state a dangerous insect pest or a dangerous plant disease new to the state, and that its spreading should be prevented, controlled or eradicated, it may adopt provisions to that end. However, this is under the Article dealing with the Missouri Plant Law and is not authority for your preventing the dumping of apples into this state from outside of the state.

Section 12626, Laws of Missouri, 1933, page 169, transferring the duties of the State Marketing Bureau to the Commissioner of Agriculture, provides in part as follows:

"Said commissioner shall have authority to conduct shipping point and terminal market grading and inspection service alone or in co-operation with the U. S. department of agriculture and to license inspectors, issue certificates on the products inspected, determine and collect and pay a reasonable service charge on the work done, and do each and every act necessary to render said grading and inspection service of greatest value to Missouri agriculture."

Under the Article dealing with Standardization and Inspection of Agricultural Products, Section 12629, R. S. Mo. 1929, empowers the commissioner, after investigation and public hearing, to fix and promulgate official standards for grading and classifying any or all agricultural products grown or produced in this state, and to fix and promulgate official standards for containers of farm products and change any of them from time to time.

Sections 12630 and 12631 authorize the commissioner to promulgate standards or any alterations or modifications of standards and to determine the date of effectiveness thereof, and authorize the commissioner to promulgate as the official standard for this state for any agricultural product or container the standard for such product or container which may have been promulgated or announced therefor under the authority of Congress, and authorize him to cooperate with the United States or any department thereof.

Section 12638 provides as follows:

"If any quantity of any agricultural product shall have been inspected and a certificate issued hereunder showing the grade, classification, quality or condition thereof no person shall represent that the grade, classification, quality or condition of such product at the time and place of such inspection was other than as shown by such certificate. Whenever any standard for the grading or classification of any agricultural product becomes effective under this article, it shall be unlawful in or in connection with any transaction or transactions involving such product in commerce subject to the jurisdiction of this state or in any publication in this state of a price or prices for or in connection with such transaction or transactions for any person to indicate the grade of any agricultural product which is of or within the grades fixed in said standard for such product by any name, description or designation or any system of names, descriptions or designations not used in said standard. Whenever any standard for a container for an agricultural product becomes effective under this article, no person

thereafter shall manufacture for commerce within the jurisdiction of this state, or sell, ship, or offer for sale in such commerce any container, either filled or unfilled, to which the standard is applicable which does not comply with such standard subject to such tolerances as may be permitted under this article. Any person violating this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$25.00 or not more than \$100.00."

Section 12639 provides as follows:

"Prosecutions under this article shall be begun and carried on in the same manner as other prosecutions for misdemeanors in this state."

Under the Article dealing with Commission Merchants, Section 12648, among other things, defines "farm products" as follows:

"The term 'farm products' shall, except as otherwise provided, include all agricultural, horticultural, vegetable and fruit products of the soil, meats, marine food products, poultry, eggs, dairy products, wool, hides, feathers, nuts, and honey, but shall not apply to seeds sold at retail, nor include timber products, tea, coffee, or pelts of fur-bearing animals."

Sub-section (c) thereof defines the term "commissioner" as follows:

"The term 'commissioner' as herein used, shall mean the state marketing commissioner or any officer, employe or agent of the state board of agriculture, or the legal successor of the state board of agriculture, designated by the state marketing commissioner to perform or assist in the performance of any of the duties vested in the 'commissioner' by this article."

Section 12654 provides as follows:

"The commissioner shall have power:

"(a) Before granting a license to any applicant, to investigate the character and standing of such applicant.

"(b) Upon the receipt of any verified complaint from any person pecuniarily interested, showing or tending reasonable to show any violations of any of the provisions of this article, to investigate fully any transaction involving solicitation, receipt, sale or attempted sale of any farm products; in furtherance of any such investigation, to require the production of and inspect or take copies of that portion of the ledgers, books, accounts, memoranda and any other documents belonging to or under the control of any commission merchant and bearing upon such transaction; and in the course of and in furtherance of such investigation to require of any commission merchant a sworn statement of all the material facts relating to any such transaction. It shall be the duty of every commission merchant, upon reasonable request of the commissioner to produce for his inspection memoranda and other documents aforesaid, and to make and deliver to the said commissioner upon his request a sworn statement of all the material facts.

"(c) Upon reasonable grounds for believing that any commission merchant has committed some act, or is in such a condition, as to justify the revocation of his license under the provisions of this article, to cite such commission merchant to appear before the commissioner and show cause why his license should not be revoked for the reasons specified in such citation. Service of the citation may be personally or by mail, at least seven days before the hearing, which shall be held in the city, village or township in which is situated

the place of business of the licensee. The commissioner, at such hearing, shall have power to administer oaths to and take the testimony of parties, and any witnesses there produced for or against the licensee. Within ten days after the hearing, the commissioner shall render his decision, dismissing the proceedings or revoking the license. It shall be the duty of the commissioner, immediately on the entry of such decision to send by registered mail a copy thereof to the licensee, at the latter's business address."

Section 12655 provides as follows:

"No person, firm, exchange, association or corporation shall receive or offer to receive, sell or offer to sell on commission within this state any kind or farm products without a license, except as in this article permitted. No person, firm, exchange, association or corporation, being a commission merchant in farm products shall (a) knowingly impose any false or fictitious charge for handling or services in connection with farm products, or (b) with intent to defraud, fail to account or make settlement therefor promptly and properly, or (c) with intent to deceive, make any material false statement or statements as to market conditions, or (d) enter into any combination to fix the prices of farm products, or (e) with intent to defraud, make any material false statement or report as to the grade, condition, markings, quality or quantity of goods, received, or (f) without a license, advertise or hold himself, themselves or itself out as a commission merchant in farm products, or (g) directly or indirectly purchase for his, their or its own account, goods received for sale on commission without prior written authority from the consignor, or fail promptly to notify the consignor of any such purchase on his, their or its own account, or fail forthwith to enter any such transaction or

purchase on the record or account of sales: (Provided, that clause (g) shall not be construed as prohibiting any commission merchant from taking to account of sales, in order to close his day's business, miscellaneous lots or parcels of farm products remaining unsold, if such commission merchant shall forthwith enter such transaction in his account of sales); or (h) willfully fail or refuse to comply with any provision of this article; and every person, firm, exchange, association or corporation violating any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof be fined not less than fifty nor more than five hundred dollars. Provided, however, that nothing in this section is intended, or shall be construed, as limiting or repealing the application of any other penal statutes covering or embracing the acts herein denounced."

If authority is conferred on the Commissioner of Agriculture by law to place such an embargo, it must be by a statute passed by the Legislature, and the nearest statutory provision pertaining to such power that we find is Section 12626, Laws of Missouri, 1933, page 169, empowering the Commissioner of Agriculture to conduct shipping point and terminal market grading and inspection, issue certificates on the products inspected, determine and collect and pay a reasonable service charge on the work done, "and do each and every act necessary to render said grading and inspection service of greatest value to Missouri agriculture."

It does not appear that this provision is broad enough to authorize such commissioner to place an embargo against such shipment into or sale in Missouri of such products. From an examination of the statutes, we find no authority lodged in the Food and Drug Commissioner to place such an embargo. There are numerous provisions authorizing local prosecution by the respective prosecuting attorneys for violation of the laws pertaining to the rights and duties of the Commissioner of Agriculture and the act relating to the Food and Drug Commissioner, but these are matters of prosecution in the counties where the violations occur.

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Until such time as the Legislature passes a law authorizing the Commissioner of Agriculture or other officer to place an embargo against the shipment of apples into Missouri, no authority therefor exists.

CONCLUSION

It is our opinion that neither the Commissioner of Agriculture nor the Food and Drug Commissioner of Missouri has authority to place an embargo prohibiting the shipment into or sale within Missouri of apples which are of an inferior keeping quality, and which apples are later sold to the consuming public of Missouri without such consuming public knowing that such apples are of such grade, the apples, when sold to such consuming public, having been taken out of their original crates which show the true keeping quality thereof and being sold from other containers.

Yours very truly,

DRAKE WATSON,  
Assistant Attorney General.

APPROVED:

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

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