

LABELING AND TAGGING: All "commercial feeding stuffs" sold, offered or exposed for a sale, or disposed of in this state, shall be labelled and tagged in accordance with the provisions of Article 22, Chapter 102, R. S. Mo. 1939, and the Commissioner may only withdraw from sale such feeds as listed in Section 14329, April 19, 1943 R. S. Mo. 1939.

Mr. H. D. Elijah
Livestock and Feed
Department of Agriculture
Jefferson City, Missouri



Dear Mr. Elijah:

This is in reply to your letter of recent date wherein you submit the following statement and request:

"The Commodity Credit Corporation is shipping carloads of soybean oil meal into Missouri. This soybean oil meal is not labeled, registered, or tagged in accordance with the Missouri Feed Law, Section 14320, Article 22, R. S. 1939, and Section 14326.

"According to Section 14321, 'Before any manufacturer, importer, jobber, firm, association, corporation, partnership or individual shall sell, offer or expose for sale or distribution in this state any feed etc.'

"Will you please render us a decision as to the authority of the Feed Division of the State Department of Agriculture to suspend from sale, according to Section 14321 and Section 14329, soybean oil meal owned by the Commodity Credit Corporation, manufactured or processed by an out-of-state company which ships the meal to a Missouri dealer and the Missouri dealer pays for the meal. The soybean oil meal is then sold to farmers.

"Does the Feed Division have authority to suspend this soybean oil meal from sale if it is not labeled or tagged when in the hands of the Missouri dealer after he has actually paid for the soybean oil meal?"

The term "commercial feeding stuffs" is defined in Section 14319, R. S. Missouri, 1939, as follows:

"The term 'commercial feeding-stuffs' shall be held to include all feeding-stuffs used for feeding livestock and poultry, except whole seeds or grains, and unmixed meals made directly from the entire grains of corn, wheat, rye, barley, oats, buckwheat, flaxseed, kaffir, and milo, whose hays, straws, cotton seed hulls and corn stover, pure corn chops and pure ground ear corn, when the same are not mixed with other materials, but the term shall not apply to other materials containing sixty (60) per cent or more of water."

Under Section 14320, each bag or package of "commercial feeding-stuffs" sold, offered or exposed for sale or distributed within this state shall be tagged or labeled. Under Section 14321, R. S. Missouri, 1939, it is provided as follows:

"Before any manufacturer, importer, jobber, firm, association, corporation, partnership or individual shall sell, offer or expose for sale or distribution in this state any feed as defined in this article he or they shall obtain a certificate of registration from the Missouri state department of agriculture. * * *"

You will note from these statutes that they are directed at transactions within the state. The General Assembly would not be authorized to control or regulate the sale, or exposing for sale, of "commercial feeding-stuffs" outside the state. However, after such feeds come into the state, if they are then sold, offered or exposed for sale or distribution, the state may regulate them by such statutes as Section 14320 and Section 14321, supra.

The power to suspend from sale feeds which do not comply with the provisions of the law is provided for under Section 14329. The feeds which may be suspended from sale, however, are described in said Section 14329, in the following language:

"Any person who shall sell, offer or expose for sale or distribution in this state any feed without complying with the requirements of this article, or who shall sell, offer or expose for sale or distribution any feed containing a smaller percentage of crude protein or crude fat or nitrogen free extract or a larger percentage of crude fibre than guaranteed for that brand shall be guilty of a violation of this article. Any person who shall fail to correctly declare the specific common names of all of the ingredients of which a feed is composed shall be guilty of a violation of this article. Any person who shall mix or adulterate any feed with rice hulls, chaff, peanut hulls, dirt, ground or crushed corn-cobs, sawdust, weed-seeds, the viability of which has not been destroyed except in poultry feeds or with more than five per cent of mineral substances with the exception that this five per cent limitation shall not apply to mineral feeds, or who shall mix or adulterate any feed with materials of little or no feeding value, or with substances injurious to the health of domestic animals or poultry, or who shall sell, offer or expose for sale or distribution any feed so mixed or adulterated shall be guilty of a violation of this article * * * * *"

In addition to the punishment under the criminal laws for the violation of the said laws, said Section 14329, provides as follows:

"* * * * In addition to the penalties imposed in this article, any lot of feed mixed or adulterated as prohibited in this section may be ordered temporarily withdrawn from sale by the commissioner, and upon court order, may be seized and condemned, sold or destroyed, and the proceeds from any such sale deposited in the 'agricultural fees fund'. * * * *"

It will be noted that if the feeds are mixed or adulterated in the manner prescribed in Section 1432, the Commissioner of Agriculture may order such feeds temporarily withdrawn from sale. But, we do not find any provisions of

the law which would authorize the Commissioner to withdraw "commercial feeding-stuffs" from sale because they have not been labelled or tagged and registered as is required by Section 14320 and Section 14321, supra. The law makes it a misdemeanor to fail to register and label "commercial feeding-stuffs." (Sections 14329 and 14330) That seems to be the only penalty prescribed for failing to register or label such feeds.

The provisions of Section 14329, authorizing withdrawal of the feeds described therein from sale are penal sections and are to be strictly construed. To construe this act to include feeds which are not registered or labelled would be contrary to the rule of construction of criminal statutes, and we do not think such construction would be authorized.

CONCLUSION

From the foregoing, it is the opinion of this department that the Commissioner of Agriculture may only suspend from sale "commercial feeding-stuffs" which are mixed or adulterated, as set out in Section 14329, supra, and that a failure to register or label "commercial feeding-stuffs" would not authorize their suspension from sale.

We are further of the opinion that if "commercial feeding-stuff" which are not labelled or tagged as required by law, are sold, or offered or exposed for sale of distribution in this state, the person so doing is guilty of a misdemeanor.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

TWB:NS