

# MAINE STATE LEGISLATURE

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STATE OF MAINE.

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REPORT

OF THE

ATTORNEY - GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1904.

1905

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tected, besides infectious diseases are quite as frequent in plantations, where less care is taken to guard against them, as in more thickly settled portions of the State. The Legislature in using the words city and town must have intended to include plantations. This is borne out by referring to Chapter 1, Revised Statutes, 1883, Sec. 6, paragraph 17, which reads as follows:

“The word ‘town’ includes cities and plantations, unless otherwise expressed or implied.” It is quite evident, therefore, that the use of the word “town” in said Chapter 123 and laws amendatory thereof and additional thereto, includes plantation. I do not find it otherwise expressed or implied.

The answer to the second query follows in the line of the answer to the first. Assuming that the word “town” includes “plantation,” then plantations are controlled and governed by the same laws which control and govern towns in relation to protection against infectious diseases.

The answer to the third query proceeds upon the same ground. The word “town” as used includes “plantation” beyond any question of doubt; hence, plantations are required under Chap. 118, Sec. 17 of the Laws of 1891, and Acts additional thereto and amendatory thereof, to pay to the clerk of such plantation, the statute fee required to be paid for “recording and returning the facts required to be recorded” for each marriage, birth and death.

#### LOW GRADE FEED STUFF.

Prosecutions under Chap. 334, Public Laws, 1897, for violation of the law.

*Hon. A. W. Gilman, Commissioner of Agriculture, Augusta, Maine:*

My Dear Sir:—I herewith make answer to your letter under cover of February 5, 1903, submitting the following questions relating to the feeding stuffs law.

1. In case low grade feed stuff was sold by a wholesale dealer last November and complaint was made and notice given as required, could such dealer be legally prosecuted at the expiration of thirty days unless it can be shown either,

(a) That he made another sale of such goods after receipt of such notice; or,

(b) That he has on hand such goods for intended sale and has not during the thirty days had them examined and tagged as required by said laws?

2. If at the expiration of thirty days, such dealer has not complied with the requirements of said law or has paid no attention to such notice, and is prosecuted on subsequent complaint, can he successfully defend by proving that he sold his entire stock of low grade feed stuffs prior to such notice, and that when such notice was given him, he had none of such goods on hand for the purpose of analysis?

3. If such dealer disposed of all such low grade feed stuffs, and had sold none after said thirty days' notice was given, but should thereafter buy a new consignment properly marked, when so purchased by him, with analysis as provided by said law, and such goods were afterwards proved to be low grade, could he be prosecuted therefor until after another thirty days' notice had been given him and he had been given an opportunity to have such goods examined and tagged?

4. Does the act apply to the small country dealer who has purchased his goods in good faith but which proves to be low grade although they were tagged with a high grade analysis and sold as high grade goods? Therefore must every retail dealer have each new lot purchased by him analyzed or sell at his peril?

5. What is the first offense set out in section 6 of said act. Is it the first committed after the notice is given regardless of how many sales have been made before the notice?

6. Would it be within the province of the director of the Maine Agricultural Experiment Station to cause to be printed upon the inspecting tags furnished by him as provided under said law an analysis of the feed stuffs contained in the package to which said tag is to be affixed?

The various questions presented for my views cover the entire law as set out in chapter 334 of the Public Laws of 1897. I will not undertake to answer these questions seriatim, but as a whole.

Said law, to wit, chapter 334 of the Public Laws of 1897 was passed by the legislature for the express purpose of protecting those engaged in agricultural pursuits who make use of feed stuffs. The opportunity to adulterate and sell such commodity as high grade feed stuffs was so great, and the ability of the purchaser to distinguish or discover the fraud was so limited, that it became abundantly necessary to pass said law, hence it

would be supposed that the most direct cut would have been taken to protect the purchaser. Strange to say, however, and it was probably an oversight on the part of the framers of the law, quite as great protection was given to the seller as to the purchaser, and on the whole a little more if anything.

Section 8 of said law provides, "Whenever the director becomes cognizant of the violation of any of the provisions of this act, he shall report such violation to the secretary of the board of agriculture, and said secretary shall prosecute the party or parties thus reported; (but it shall be the duty of said secretary upon thus ascertaining any violation of this act, to forthwith notify the manufacturer, importer or dealer in writing, and give him not less than thirty days thereafter in which to comply with the requirements of this act,) but there shall be no prosecution in relation to the quality of any concentrated commercial feeding stuff, if the same shall be found substantially equivalent to the certified statement named in section four of this act."

This section is a remarkable illustration of destroying by an injected sentence a law which otherwise would have been exceedingly salutary. Had the following provisional words been omitted from this section, then the law would have probably accomplished its purpose in a great measure: to wit, "but it shall be the duty of the secretary upon thus ascertaining any violation of this act, to forthwith notify the manufacturer, importer or dealer in writing and give him not less than thirty days thereafter in which to comply with the requirements of this act."

The question arises, what is the effect of these words upon the law as it stands? They apply to all acts which are prohibitory or directory.

Assume that a dealer on the first day of January last closed out a large stock of low grade feed stuffs without in any respect complying with the law. It is discovered after said date that such feed stuffs have been disposed of in the State contrary to law. Proper notice thereof was given to the secretary of the board and he, under the law, at once gave notice to the party making the sale and he is given thirty days to comply with the requirements of said law. How can he do it? His feed stuffs have all been sold, they have gone to all parts of the State. How can he give a sample to the proper authority for analysis? How can he have them properly tagged and marked for the pur-

poses required? It is clear, therefore, that the requirement is sheerest nonsense. The dealer has gotten clear of his stuffs, they have gone to the various parts of the State. He has received his notice to comply with the law and he is not under any conditions able to do so. A law which requires an act from a man which cannot possibly be done cannot be enforced.

Again, supposing some dealer had sold only part of his stock and then had received notice from the secretary and then failed to properly mark the balance of his stock or to comply with the law in other respects and had neither offered for sale nor sold any more of his stock, the law could not reach him, for he could properly tag his remaining goods and submit them to analysis but need not sell or offer them for sale or for distribution.

Suppose, further, that on receiving notice he does mark the balance of his stock as high grade feed stuffs and that he even submits a sample for analysis which clearly shows that he is apparently complying with the law as to the quality of his goods but it proves to be otherwise, what can be done? Another notice must be issued to him running for thirty days and in the meantime he may dispose of the balance of his stock, at the end of which time the law would undertake to require of him an impossibility. The law cannot compel any dealer to mark his goods or have them analyzed until they are offered for sale or exposed for sale or for distribution. He may heap his buildings with them so long as they are not offered for sale or exposed for sale, or for distribution.

In this connection, as appears under section 1 it is evident that the law applies to the manufacturer, wholesale dealer or retail dealer offering such feeding stuffs for sale or exposing the same for sale or for distribution.

It is also apparent that although the dealer has been found wanting in selling a certain class of feeding stuffs, and although notice has been duly given to him of the illegal sale, yet on the sale by him of another consignment of feeding stuffs, he is entitled to the notice required by the law the same as in the first instance. The retail dealer who distributes such merchandise must necessarily have the same properly analyzed or sell at his peril.

The law should be enforced with such strictness against the wholesale dealer as to protect the retail dealer, or else the burden

will necessarily fall on him and the real parties who are the most at fault will escape. The requirements of section 8 form the basis for the successful prosecution of any person under said law. This section, as the law now stands, must be complied with before prosecution can be commenced and the offense must be by reason of the infringement of the act and subsequent refusal to comply with the statutes, a double requisite, it will be noticed, which, as hereinbefore stated, amounts virtually to a nullity.

The words of section 5 of said law commencing with the tenth line, which read as follows: to wit, "The director of said experiment station is hereby empowered to prescribe the form of said tags and adopt such regulations as may be necessary for the enforcement of the law," seem to be sufficient to permit the director of the Maine Agricultural Station to cause to be printed upon the inspection tags furnished by him under article 5 of the act, an analysis of feed stuffs contained in the package to which said tag is to be affixed.

February 10, 1903.

#### SMELTS.

Paying duties in this State, and shipping smelts through the State. Sale of such smelts within the State of Maine. Warden's authority.

*Hon. A. R. Nickerson, Commissioner of Sea and Shore Fisheries, Boothbay Harbor, Me.:*

My Dear Sir:—I herewith submit to you my views in answer to the foregoing questions presented by you for my consideration.

The questions in order are as follows:

1. Can smelts be lawfully shipped from New Brunswick to Boston or New York, landed in Eastport, paying duties at Eastport, and then reshipped from Eastport to the above mentioned ports? Or can they be received from New Brunswick by a resident of Maine, and after paying duty, sold in the State or shipped out of the State?

2. Whether or not you have exceeded your authority as given you by section 71 of chapter 284 of the Public Laws of 1901, by sending a copy of the enclosed letter to violators of chapter 284 of the Public Laws of 1901?

Copy of letter presented.