

MAINE STATE LEGISLATURE

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October 28, 1914

To A. M. G. Soule, Esq., Chief, Bureau of Inspection, Agriculture
Re: Pure Food Law

I have your letter of September 22nd, relative to the enforcement of the Pure Food Law. Parts of the law (Chapter 119 of the Public Laws of 1911, as amended by Chapter 140, Laws of 1913), so far as it relates to the questions you have submitted, are as follows:

"Section 15. When the commissioner of agriculture becomes cognizant of the violation of any of the provisions of the act he shall cause notice of such fact, together with a copy of the findings to be given to the person from whom the sample was obtained, and the person whose name appears upon the label. The persons so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by said commissioner. Notice shall specify the date, hour and place of the hearing.

"Section 16. Punishment provided. Fine not exceeding \$100 for the first offense and not exceeding \$200. for each subsequent offense.

Section 19. The commissioner of agriculture shall diligently enforce all of the provisions of this act and shall have advice of attorney general and county attorneys.

The said commissioner in his discretion may recover the penalties for the violation of the provisions of this act in an action on the case in his own name. The venue to be as in other civil actions and the plaintiff prevailing in any such action shall recover full costs or he may prosecute violators.

"Section 7. The commissioner of agriculture is hereby authorized with the approval of the governor and council to appoint and fix the compensation of a chief deputy and such other deputies as in his judgment and discretion are necessary to assist and enable him to carry out the provisions of any of the laws mentioned in this act."

By the terms of the act the duty is placed upon the commissioner of agriculture to enforce its provisions. In performing this duty he is specifically authorized to appoint a chief deputy to assist him. By this provision it would seem that the statute clearly gives the commissioner the right to have his chief deputy act for him in enforcing the law. Having appointed you, he has given you the power to deal with violators of the act in the method provided.

Having examined your method of dealing with violators of this act, I believe you have followed the provisions of the statute and,

therefore, have acted legally. In regard to the notice of hearing, I presume that in the two cases submitted, there were no labels on the articles containing names other than of the offenders. If there are any such names, the act provides that notice shall be sent to such persons, the same as to the person from whom the sample was taken. Having established the claim properly in the manner provided in the act, I believe that you are within your rights in settling the claim out of court in the manner that you have described. The statute provides that the commissioner may bring a civil suit and, that being so, I see no reason why the claim cannot be settled without resorting to the courts. I would, therefore, answer your questions in the affirmative. Of course, all your acts are subject to the control of the commissioner of agriculture.

In reply to the further question. . . as to whether the commissioner of agriculture, bringing a civil action as authorized by statute in his own name, is liable personally for the costs of such action in case judgment goes against him. I am of the opinion that he would not be liable for costs, for the reason that he is acting in his representative capacity on behalf of the State and in the discharge of an official duty. What he may recover goes to the state treasurer. In such a case, the law is that officials are not liable for costs, provided they have not acted with gross negligence, in bad faith, or with malice. In bringing the suit the commissioner should describe himself as commissioner of agriculture of the State, acting under Section 19 of the act, so that it will appear that he is acting in his representative capacity.

Roscoe T. Holt
Assistant Attorney General