

MAINE STATE LEGISLATURE

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December 20, 1965

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Agriculture - Markets

George C. West, Deputy

Attorney General

Maine Potato Branding Law

Reference is made to your memo of December 9th concerning the problem of prosecution under the potato branding law as amended at the last session of the legislature. One District Court Judge has indicated that in his opinion section 954-A does not spell out a crime. Apparently an Assistant County Attorney in another area of the State has taken the same position. You have now asked this office if we agree or disagree with these conclusions.

I would have to agree with Judge Anderson that section 954-A does not spell out a crime. However, I believe that Judge Anderson may have incorrectly interpreted section 952 which does quite clearly spell out a crime.

I would call to your attention certain language in § 952. The section starts off with the wording, "It shall be unlawful for any person, firm" etc., to do certain things. The use of the word "unlawful" certainly indicates the intention of the legislature that any person who does the things stated shall be guilty of a crime.

The fourth sentence states, "The bill of lading or invoice shall be prima facie evidence in any court of the person or persons packing potatoes." This is another clear indication of legislative intent that a person who fails to perform certain requirements in the preceding sections will be appearing in court. If this were not so, this sentence would have no meaning whatever.

The fifth sentence states, "It shall be conclusive evidence" which is another clear indication that the legislature expected that persons failing to do certain things would appear in court. If the legislature did not so intend, this provision would be utterly meaningless.

The last sentence states, "When a violation of the above provisions occurs, it is deemed to have taken place at the loading point or where such violation first became evident to the commissioner or his duly authorized representative." This is a clear indication

by the legislature that it seeks to state the place of violation in order to determine what court would have jurisdiction of the particular violation. Once again, if there were no criminal violation intended by section 952, this sentence would be meaningless. The legislature does not pass meaningless acts. Every statement in section 952 clearly indicates that the legislature expected that any person who did not do the things required by this section could be prosecuted for these failures.

Added to this is the amendment to section 957 which raised the maximum penalty from \$200 to \$300 for a second or subsequent offense. Most certainly this indicates that the legislature contemplated criminal action for violations of any of the provisions of sections 951 to 957 which could be violated.

As to section 954-A, this was an attempt by the legislature to allow the violator an opportunity to still sell his potatoes by having them regraded even though he had violated section 952. It is quite obvious that the legislature intended this provision only for the purpose of preventing the State from seizing the potatoes as well as charging the individual with a criminal act. To have allowed such a situation to exist would have subjected the violator not only to a fine, but to the loss resulting from the seizure of the potatoes and the inability of the seller to dispose of his product. The legislature felt that the fine plus the delay in transportation and extra cost of regrading and repacking the potatoes was a sufficient penalty upon the errant shipper.

A reading of the branding law as a whole clearly indicates that the legislature did not intend section 954-A to be in substitution for criminal penalties. I might add a personal note at this point to the effect that I spent considerable time in the fall of 1964 and during the legislative session with members of the Department of Agriculture as well as with members of the Legislative Committee on Agriculture, and other persons interested in the potato industry, in drafting and putting this law into its present form. I know from personal knowledge that the interpretation given above is that which the legislative committee wanted to affix, and I believe the language is sufficiently clear and unambiguous to produce that result.