

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

M.R.S.A. 1964, Chapter 153; the funds appropriated by the Legislature can not be turned over to the control of any individual or group for the private contracting of pool construction. There is no authority for restricting bidders to contractors having all union employees; the Governor and Council cannot accept a gift of funds for construction of the Pineland pool subject to such condition.

COURTLAND D. PERRY
Assistant Attorney General

September 1, 1971
Agriculture

Maynard C. Dolloff, Commissioner

P.L. 1971, c. 366; Meaning of "Guarantees" Appearing in Section 1022, sub-§ 2.

SYLLABUS:

The language respecting "guarantees" in P.L. 1971, c. 366 (7 M.R.S.A. § 1022, 2) does not bar a Maine potato grower from guaranteeing his product to point of destination.

FACTS:

The Legislature, at the 1971 Regular Session, enacted licensing provisions regarding the potato industry. *P.L. 1971, c. 366*. The reference legislation contains the following language respecting "guarantees":

"In any sale in which the buyer of such potatoes is a person required to be licensed by this Article and has a place of business in this State except a retailer, any guarantees with regard to grade, size, weight or other specifications, made by the producer shall be deemed satisfied when the grade, size, weight or specifications, as certified by a licensed federal-state potato inspector, or seed potato inspector, after such potatoes have been or while they are being loaded for transit, equals or exceeds the grade, size, weight or other specifications of such potatoes stated in such record. Any producer making such guarantees shall at all time prior to shipment have the option to determine whether or not said potatoes shall be inspected in accordance with this subsection. Any agreement conflicting with the provisions of this subsection is not enforceable by way of action or defense." (*Section 1022, 2 of Title 7*)

It is represented that many potato growers will want to guarantee their product to destination and that many dealers will accept this type of business. For various reasons, a grower may become disgruntled because either his neighbor or some other grower is making such guarantees beyond the Maine shipping point. Such a disgruntled grower may complain to the Commissioner of Agriculture in the form of a verified complaint presented under § 1016 of the reference licensing statute. Because the filing of such a verified complaint calls for an investigation by you as Commissioner (or your duly authorized agent) and the attending possibility of subsequent revocation of license, you have been asked to express your opinion whether an agreement between a grower and a dealer wherein the former guarantees the product to destination outside Maine would be viewed as a violation of the guarantee provision cited above.

QUESTION:

Whether a grower's guarantee of his product as to grade, size, weight or other specifications, to destination violates the "guarantees provision" in the reference licensing statute?

ANSWER:

No.

REASONS:

The "guarantee language" does not pointedly state that a potato grower may not legally guarantee his product to destination as to grade, size, weight or other specifications. The language in the first sentence considered to be material to the issue is that language wherein any guarantees made by the producer are deemed "satisfied" when a licensed federal-state potato inspector or seed potato inspector certifies that the product equals or exceeds that stated in the record as to grade, size, weight or other specifications. The material word in that sentence is "satisfied". The decisional law respecting the definition of the word "satisfied" is not helpful in determining the meaning of the word as used here. *Words and Phrases*, "Satisfied". The word "satisfied" can mean any one of several things: (1) To answer or discharge, as a claim, debt, legal demand, or the like; (2) To convince or free from uncertainty; (3) To answer convincingly, as to solve; or (4) To fulfill the requirements of, as to satisfy a condition. It appears that the term, "satisfied", as used in the reference "guarantees" means to fulfill the requirements of something, i.e., to satisfy a condition. *Webster's New Collegiate Dictionary*, "Satisfy". That interpretation seems reasonable in light of the fact that the grade, size, weight or other specifications of the product involve the condition of the product.

Continuing, the next question is whether language appears in the reference guarantee provision restricting the operation of the guarantee to the shipping point in Maine. The only restrictive language appears in the last sentence: "Any agreement conflicting with the provisions of this subsection is not enforceable by way of action or defense." However, that sentence is dependent upon what appears in the balance of the paragraph. We find nothing in the remainder of the paragraph which in any way forecloses a grower from guaranteeing his product to destination respecting its grade, size, weight or other specifications. It even appears that the reference guarantees may be created with or without inspections. That conclusion is apparent from reading of the second sentence: "Any producer making any such guarantees shall at all time prior to shipment have the option to determine whether or not said potatoes shall be inspected in accordance with this subsection". Nothing in that sentence, however, indicates that such a guarantee ceases to exist beyond the shipping point of the grower.

If the Legislature intended that a grower of potatoes in the State not be afforded the opportunity of guaranteeing his product to destination, it has not so stated.

"We are ascertaining here not what the Legislature may have meant by what it said but rather are deciding what that which the Legislature said means." *State v. Millett*, 160 Me. 357, 360.

JOHN W. BENOIT, JR.
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