

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Potato Labeling Law, Venue
7 M.R.S.A. 952-957

August 17, 1977

To: Joseph S. Williams, Commissioner of Agriculture

From: Sarah Redfield, Assistant Attorney General

This is in response to your request for an opinion as to the proper place to institute proceedings for violation of the laws concerning the branding and labeling of potatoes, Title 7 M.R.S.A. Sections 952-957.

SUMMARY:

As further discussed herein, for violations of Section 952 committed after October 24, 1977, a civil proceeding may properly be instituted in the District Court in the division where the plaintiff resides or in the division where the defendant resides. In the alternative, a civil proceeding may be instituted in the Superior Court in the county where the plaintiff resides, in the county where the defendant resides, in the county where the potatoes were loaded, or in the county where the violation was first discovered by the Commissioner or his duly authorized agent.

For violations of Section 953 committed after October 24, 1977, proper venue exists as described for Section 952, except venue may not be based on the location of the loading of the potatoes.

For violations occurring after May 1, 1976, and before October 24, 1977, proceedings may be properly instituted against individuals for the violation of Sections 952 and 953 as described above. In addition, against corporations, criminal proceedings may also be instituted in the division or county where the cause of action arose. That is for violation of Section 952 venue for criminal proceedings lies where the potatoes were loaded or where the violation is discovered, and for violation of Section 953, where discovered.

DISCUSSION:

Title 7 M.R.S.A. Sec. 952 provides in general that it is unlawful to sell potatoes which are not properly branded or labeled. The section specifically provides that "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." Similarly, Title 7 M.R.S.A. Sec. 953 generally provides that it is unlawful to possess or sell potatoes prepared for market which are packaged in a false or misleading manner, which fail to meet State grade requirements, or which are not accompanied by a proper bill of lading. A violation of this provision is "deemed to have taken place at the point where such violation first became evident to the Commissioner or his duly authorized representative."

The Commissioner is authorized to recover prescribed penalties in a civil action brought in his own name or to prosecute by way of complaint or indictment, Title 7 M.R.S.A. Sec. 956, see also 7 M.R.S.A. Sec. 13. The District Court and Superior Court have concurrent jurisdiction over such actions, 7 M.R.S.A. Sec. 956. Monetary penalties are established by Section 957; there is no provision for imprisonment, see 7 M.R.S.A. Sec. 957. Because there is no provision for imprisonment, the Maine Criminal Code, as of October 24, 1977, removes the Commissioner's authority to proceed criminally by making violations such as those proscribed by Sections 952 and 953 "civil violations," 17-A M.R.S.A. Sec. 4-A.1.B, as amended by P.L. 1977, c. 564, Sec. 84, 17-A M.R.S.A. Secs. 4-a.4, 4.3. For violations committed prior to October 24, 1977, but after May 1, 1976, the provisions of the Maine Criminal Code made violations such as those proscribed by Secs. 952 and 953 civil violations except where committed by an "organization" in which case the violations may be considered a crime, in this case a Class E crime for the first two violations and a Class C crime for the third violation within a year.

Where there is a violation by a corporate defendant prior to October 24, 1977, and the State proceeds criminally, the case may properly be brought in the division or county where the offense was committed, see 7 M.R.S.A. Sec. 13, Maine Rules of Criminal Procedure, Rule 18, for both District and Superior Courts. Pursuant to Section 952 this would be either where the potatoes were loaded or where the violation was first discovered and pursuant to Section 953, where first discovered.

After October 24, 1977, all actions are civil actions. The pre-existing criminal jurisdiction of the Commissioner is converted to jurisdiction over "civil violations." Where the Commissioner proceeds with civil action, venue lies pursuant to Title 7 M.R.S.A. Sec. 13 as it would in other civil actions. Accordingly, in District Court venue for a violation of Secs. 952 and 953 lies in the division where either the plaintiff or defendant resides, 4 M.R.S.A. Sec. 155.4, with a corporation being deemed to reside where it maintains a place of business.

In Superior Court venue lies in the county where any plaintiff or defendant lives, or in the county where the cause of action took place, 14 M.R.S.A. Sec. 501. Corporations may be sued in the county in which they have an established place of business, 14 M.R.S.A. Sec. 505. Although it is not specifically expressed, the Commissioner could presumably always sue in Kennebec County. See 14 M.R.S.A. Secs. 501, 505, see also 507. The remaining alternatives include: the county where the defendant resides, or, if a corporation, where it has established a place of business; the county where the violation is discovered by the Commissioner or his authorized agent; or, in the case of violations of Section 952, the county where the potatoes were loaded. The provisions of the Maine Rules of Civil Procedure, Rule 80H(e) would not limit venue to the county where the violation is alleged to have been committed inasmuch as violation of Secs. 952 and 953 are not designated civil violations by expressed statutory provision but rather only by operation of the Maine Criminal Code, see Rule 80H(a).

SARAH REDFIELD
Assistant Attorney General

SR/ec