

MAINE STATE LEGISLATURE

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Potatoes - Maine - 7 APR 1978 953

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

April 3, 1978

Honorable Michael E. Carpenter
1 South Street
Houlton, Maine 04730

Dear Senator Carpenter:

This is in response to your oral request for an opinion as to the potential illegality of the following two situations:

1. The importation into Maine of Canadian seed potatoes properly marked as such and the repacking in Maine of such potatoes in potato bags labeled "U.S. Grade No. 1 Maine Potatoes," which potatoes are ultimately destined for sale as table stock; and
2. The shipping of Maine potatoes into Massachusetts where they are mixed with potatoes of a lesser grade but bagged in bags marked "U.S. Grade No. 1 Maine Potatoes."

I will attempt in this letter to address the various State and Federal laws which may be applicable to the above situation. I have not discussed the question of illegal import into the State but will do so in a future memorandum. This memorandum is not meant to definitively indicate illegality, but simply to provide an overview of potential statutory violations; this memorandum is necessarily general in nature due to my lack of knowledge as to the specific details of the activities you have described. In this regard, should evidence or information concerning such violations become known to you, I would anticipate your forwarding it to the Department of Agriculture and to this office for review and possible enforcement action.

CANADIAN POTATOES:

The repacking of Canadian seed potatoes as Maine potatoes for table stock may be a violation of Maine statutes regarding the grading and branding of potatoes. In particular, Title 7 M.R.S.A. § 953 provides, in pertinent part, that:

"It shall be unlawful for any person, firm, association, organization or corporation to expose for sale or sell at wholesale or retail, to ship, deliver or confine, or have in possession potatoes prepared for market in containers which bear any statements, design or device regarding such potatoes which shall be false or misleading, in any particular. . . . " (emphasis supplied)

Sale of Canadian seed potatoes in containers labeled as Maine potatoes would be false and misleading and would subject the violator to the penalty provisions of Title 7 M.R.S.A. § 957 and the possibility of seizure pursuant to Title 7 M.R.S.A. § 954-A.

Such packing of Canadian potatoes in Maine bags may also be in violation of the State's Unfair Trade Practices Act as a deceptive act or practice in the conduct of any trade or commerce, Title 5 M.R.S.A. § 207. Such violations are subject to suit by the Attorney General to enjoin the unfair or deceptive practice and to obtain whatever other relief may be necessary to restore any persons who may have suffered a loss because of the unlawful practice. Private remedies may also be available pursuant to the Unfair Trade Practices Act, 5 M.R.S.A. § 213.

The situation you described may also be in violation of the Uniform Deceptive Trade Practices Act, Title 10 M.R.S.A. §§ 1211 to 1216. Specifically, Title 10 M.R.S.A. § 1212 provides that a person is engaged in an unlawful deceptive trade practice when in the course of his business, profession or occupation he

"B. Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services; . . .

"D. Uses deceptive representations or designations of geographic origin in connection with goods or services. . . . "

A person who is likely to be damaged by a deceptive trade practice of another may seek an injunction to stop such practices, Title 10 M.R.S.A. § 1213. In such an action, proof of monetary damages or intent to deceive is not necessary. In certain cases the court may award attorneys' fees to the prevailing party.

In addition to the civil statutes cited above, the activities which you describe may also be a violation of the State criminal law concerning fraud. Title 17-A M.R.S.A. § 901.1 provides that a person is guilty of

"deceptive business practices if, in the course of engaging in a business, occupation or profession, he intentionally: . . .

"D. Sells, offers or exposes for sale any commodity which is adulterated or mislabeled; . . .

"G. Makes or causes to be made a false statement of material fact in any advertisement addressed to the public or to a substantial number of persons, in connection with the promotion of his business, occupation or profession or to increase the consumption of specified property or service"

"Mislabeled," as it is used in this provision, means "having a label varying from the standard of truth and disclosure in labeling prescribed by statute or lawfully promulgated by administrative regulation, or if none, as set by established commercial usage." Title 17-A M.R.S.A. § 901.3.B. Deceptive business practices, as defined, is a Class D crime, Title 17-A M.R.S.A. § 901.4.

It also appears that the practices you have described could be in violation of Federal law. The Federal law governing perishable agricultural commodities provides, in part, that it shall be unlawful in connection with any transaction in interstate or foreign commerce

"(5) for any commission merchant, dealer, or broker to misrepresent by word, act, mark, stencil, label, statement, or deed, the character, kind, grade, quality, quantity, size, pack, weight, condition, degree of maturity, or State, county, or region of origin of any perishable agricultural commodity received, shipped, sold, or offered to be sold in interstate or foreign commerce." Title 7 U.S.C.A. § 499b(5).

The terms "commission merchant," "dealer," and "broker" as well as "commodity" and "interstate or foreign commerce" are all defined by federal statute. See Title 7 U.S.C.A. § 499a.

Although the information provided by you does not make clear the exact nature of the method by which these potatoes are to be bagged; it may be that the activities involved are also a violation of Title 7 U.S.C.A. § 499b(6) which makes it unlawful for a

Commission merchant, dealer or broker

"for a fraudulent purpose to remove, alter or tamper with any card, stencil, stamp, tag, or other notice placed upon any container or railroad car containing any perishable agricultural commodity if such card, . . . contains a certificate or statement under authority of any Federal or State inspector or in compliance with any Federal or State law or regulation as to the grade or quality of the commodity contained in such container, or railroad car or the State or county in which such commodity was produced."

Generally the federal law concerning perishable agricultural commodities requires the licensing of certain merchants, dealers, and brokers and provides that if any such person violates the provisions of § 499b, quoted above, such person shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violations. Enforcement of such liability may be by complaint to the Secretary of Agriculture or by suit in a court of competent jurisdiction in addition to whatever other remedy may be available by law. The Secretary of Agriculture may also suspend or revoke the license of such person for failure to comply with the statute.

In addition to potential violations of the specific federal laws concerning agricultural commodities, the activities which you described appear also to be a violation of the Federal Trade Commission Act, Title 15 U.S.C.A. § 45d prohibiting unfair and deceptive acts in or affecting commerce.

In regard to further interpretation and enforcement of the federal statutes, you may wish to contact the United States Attorney's Office or the United States Department of Agriculture.

MASSACHUSETTS TRANSACTIONS:

The provisions of the federal law cited above would also appear to be applicable to the transactions which you describe concerning packing and repacking of Maine potatoes in Massachusetts. In addition to those statutes cited, it appears that such activities may also be a violation of Title 7 U.S.C.A. § 499b(7) which makes it unlawful for certain merchants, dealers or brokers without the consent of an inspector "to make, cause, or permit to be made any change by way of substitution or otherwise in the contents of a load or lot of any perishable agricultural commodity after it has been officially inspected for grading and certification, but this shall not prohibit re-sorting and discarding any inferior produce." Without more actual information, I am unable to ascertain whether this section would be applicable.

Similarly, it may be that the activities which you describe to the extent they take place in a warehouse governed by the provisions of Title 7 U.S.C.A. § 241, et seq., the United States Warehouse Act, could be a violation of the provisions thereof. Specifically, this Act provides in Title 7 U.S.C.A. § 258 that a warehouseman conducting a warehouse licensed by the federal government

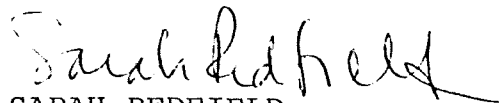
"shall keep the agricultural products therein of one depositor so far separate from agricultural products of other depositors, and from other agricultural products of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the agricultural products deposited. . . ."

There are certain exceptions to this provision and again without knowing more specific details, I am not able to evaluate the applicability.

It may also be that there are statutes of the State of Massachusetts, such as the Massachusetts Consumer Protection Act, Mass. Gen. Law, c. 93A, similar to those of the State of Maine discussed above which are applicable. In this regard, our Consumer and Antitrust Division has suggested that you may wish to contact Ms. Paula Gold of the Massachusetts Attorney General's Office, Consumer Protection Division.

The preceding is a general overview of the law which I hope you will find helpful. If you are able to provide more specific information about your concerns, I would be better prepared to answer your questions. If you need more information, or wish to discuss further, please feel free to call me.

Sincerely,



SARAH REDFIELD
Assistant Attorney General

SR/ec

cc: Joseph Williams
Carl Brown