

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

September 27, 1979

Stewart N. Smith, Commissioner
Department of Agriculture
State House
Augusta, Maine 04333

Dear Mr. Smith:

This is in response to your oral request for an opinion concerning the possible adoption of a "Maine No. 1" potato grade. The existing regulations of your Department incorporate as Maine standards the potato grades and standards of the United States Department of Agriculture. Your regulations also establish two grades with higher standards, which grades are designated as "Maine Chef Specials" and "Maine Super Spuds," and an additional grade known as "Maine Processing," which grade has no federal equivalent. See, generally, CMR Chapter 121. It is my understanding that the proposal currently being considered would involve the adoption of a grade to be designated as "Maine No. 1" with standards which would be higher in some respects than those for a U.S. No. 1 grade, but lower in other respects than the federal grade. As long as the standards are in any way lower in their requirements than those of the U.S. No. 1 grade, the use of the label "Maine No. 1" would be inconsistent with Title 7 M.R.S.A. § 951 and might also be found to be misleading to consumers.

Title 7 M.R.S.A. § 951 provides as follows:

"The Commissioner of Agriculture is authorized and empowered, after holding public hearings in a manner consistent with the Maine Administrative Procedure Act, to establish and promulgate official definitions and standards for grading, or classifying, packing and labelling potatoes and to change such official standards from time to time.

"Such official standards shall not be lower in their requirements than the minimum requirements of the official standards for corresponding grades or classifications as promulgated from time to time by the Secretary of Agriculture of the United States, commonly known as U.S. grades." (Emphasis supplied)

The Secretary of Agriculture of the United States, acting pursuant to the authority of the Agricultural Marketing Act, Title 7 U.S.C.A. § 1622(h), has adopted grades for potatoes. See 7 C.F.R. § 51.1540 for the standards of U.S. Extra No. 1; § 51.1541 for the standards for U.S. No. 1; § 51.1542 for the standards for U.S. Commercial; § 51.1543 for the standards for U.S. No. 2; § 51.1544 for the standards for Unclassified.

Title 1 M.R.S.A. § 72.3 provides that, in construing a statute, "Words and phrases shall be construed according to the common meaning of the language." See, also, In Re Belgrade Shores, Inc., 359 A.2d 59 (Me. 1976). In the present case, the language of Title 7 M.R.S.A. § 951 appears to clearly prohibit the Commissioner from adopting as a State grade any standard which is lower than that for the "corresponding" federal grade. "Correspond" is generally defined as "to answer (to something else) in fitness, character, function, amount, etc.; to agree, fit or match; to be like, as in dimensions or arrangement of parts," Webster's New International Dictionary of the English Language (2nd Ed. 1955). A Maine No. 1 grade would be analogous to the U.S. No. 1 grade, and its standards could therefore be no lower than the minimum standards for U.S. No. 1. See 7 C.F.R. § 51.1542.

In construing a statute, courts are guided by certain principles of statutory construction. These principles require reference to the legislative intent. The fact that the Legislature specifically added a requirement to a statute or that it differentiated in restrictions applied in similar statutes is significant. See, e.g., Davis v. State, 306 A.2d 127 at 129-30 (Me. 1973); Finks v. Maine State Highway Commission, 328 A.2d 791 at 795, 799 (Me. 1974).

Applying these general principles to Title 7 M.R.S.A. § 951 confirms the conclusion that a Maine No. 1 grade must be at least the equivalent of a U.S. No. 1 grade in all of its requirements. In 1965, the Legislature specifically added the requirement of analogous State and federal grades to Title 7 M.R.S.A. § 951. See P.L. 1965, c. 219, § 2, Legislative Documents of 1965, L.D. 1357. Prior to this revision, no such limitation existed concerning the official grades which might be promulgated by the Commissioner. By comparison, Title 7

M.R.S.A. § 442, regarding grades for all agricultural products, contains no such restrictions. If the legislative enactment of Chapter 219 of the Public Laws of 1965 (entitled "An Act Revising the Potato Grading Law") is to be given meaning, it appears that it must necessarily be read as a limitation on the grades which may be adopted by the Commissioner. It is difficult to understand what the Legislature might have reasonably contemplated by the addition of the limiting language of § 951 if it were not the prohibition of a Maine No. 1 grade with standards lower in their requirements than those of a U.S. No. 1 grade.

In addition to the specific language of Title 7 M.R.S.A. § 951, I am concerned that the proposed use of a Maine No. 1 grade of quality lesser in some respects than that of the existing U.S. No. 1 grade may be found to be misleading to consumers. Title 5 M.R.S.A. § 207 indicates that it is the intent of the Maine Legislature that in determining the existence of an unfair or deceptive act or practice, the State be guided by the Federal Trade Commission and the federal court interpretations of the Federal Trade Commission Act, 15 U.S.C.A. § 45(a)(1). In this regard, the federal courts have held that an advertisement is misleading or deceptive if it has "a tendency and capacity to mislead" regardless of whether actual deception is shown; Vacu-Matic Carburator Co. v. Federal Trade Commission, 157 F.2d 711, 713 (7th Cir. 1946). In ascertaining such a tendency, the federal courts will consider the impact, not upon experts, but upon "the public, - that vast multitude which includes the ignorant, the unthinking and the credulous, who, in making purchases, do not stop to analyze but too often are governed by appearances and general impressions." Consideration is given to the fact that "the ultimate impression upon the mind of the reader arises from the sum total of not only what is said but also of all that is reasonably implied," Aronberg v. Federal Trade Commission, 132 F.2d 165, 167 (7th Cir. 1942). Given this standard of review, it appears possible that a "Maine No. 1" label might well be perceived by an ordinary consumer to contain a product of the State of Maine equivalent to that commonly designated as "U.S. No. 1."

In conclusion, in view of the specific provisions of Title 7 M.R.S.A. § 951 and the more general concerns as to the implications of such a grade to a consumer, a Maine No. 1 grade for potatoes, the standards for which would not be at least equal to the U.S. No. 1 grade in all aspects, would be inappropriate. This conclusion, however, does not preclude your use of a grade with another name as long as it either complies with the corresponding U.S. grade or has no corresponding U.S. grade.

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If you should require further assistance, please feel free to let me know.

Sincerely,

Sarah Redfield

SARAH REDFIELD
Assistant Attorney General

SR/ec

cc: Carl Brown
Edwin Plissey