

AGRICULTURE:

SEED:



A farmer offering unlabeled seed for sale by a public sales service violates Section 266.071, Paragraph 1, Subsection (2), RSMo, Cumulative Supplement, 1951, and the operator of a "community sales service" may also be held criminally liable for selling unlabeled seed in violation of the above section.

September 22, 1953

Honorable L. C. Carpenter
Commissioner
Department of Agriculture
Jefferson City, Missouri

Dear Mr. Carpenter:

By your letter of April 7, 1953, you request an official opinion of this Department as follows:

"Section 266.080 of the Missouri Seed Law (1951), provides that the provisions of this law shall not apply 'to a farmer who sells seed of his own production, except farmers and seed producers shall be classed as seedsmen and must comply with all the provisions of this law when such farmers or seed producers sell seed by any public sales service.'

"Will you please give us an opinion as to whom is considered the responsible party for seed sold through our so-called 'Community Sales', the person offering the seed for sale through the sales barn, or the operator of the sales barn?"

You subsequently stated that the particular offense to which you had reference was the sale of unlabeled seed, in violation of Section 266.071, RSMo, Cumulative Supplement, 1951, Subsection 1 (2).

We assume the "Community Sales", referred to in your request, to be a public community auction sale, conducted as a regular business, to which the public is invited to bring articles for sale at public outcry. The sale being conducted on premises owned or under control of the proprietor of the business. At any given sale there may be sold many articles of a sundry nature. The public is invited to attend the auction sale and buy the articles

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offered. The articles are sold at auction; the auctioneer being the proprietor himself, or in the employ of the proprietor. Section 266.071 requires that agricultural or vegetable seed be labeled:

"1. It shall be unlawful for any person to sell, offer for sale, or expose for sale any agricultural or vegetable seed within this state

* * * * *

"(2) Not labeled in accordance with the provisions of sections 266.011 to 266.120 or having a false or misleading labeling."

Penalty for violation of the above is provided by Section 266.111:

"1. Every violation of the provisions of sections 266.011 to 266.120 shall be deemed a misdemeanor.

"2. When the commissioner of agriculture shall find that any person has violated any of the provisions of sections 266.011 to 266.120, he or his duly authorized agent or agents may institute proceedings in the circuit court or court of common pleas of the county or city in which the violation occurred, to have such person convicted therefor; or the commissioner of agriculture may file with the attorney general with the view of prosecution, such evidence as may be deemed necessary. It shall be the duty of the prosecuting attorney or circuit attorney for the county or city in which the violation occurred, or the attorney general, as the case may be, to institute proceedings at once against any person charged with a violation of sections 266.011 to 266.120 if, in the judgment of such officer, the information submitted warrants such action. After judgment by the court in any case arising under sections 266.011 to 266.120, the commissioner of agriculture may publish the complete facts pertinent to the issuance of the judgment by the court in such manner as he may deem best."

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Exemptions to the provisions of Section 266.071 are provided by Section 266.080, the exemption here pertinent, being Subsection (3) (c):

"The provisions of sections 266.051, 266.061 and 266.071 shall not apply:

* * * * *

"(3) To a farmer who sells seed of his own production, except farmers and seed producers shall be classed as seedsmen and must comply with all the provisions of sections 266.011 to 266.120 when such farmers or seed producers

* * * * *

"(c) Sell seed by any public sales service."

To determine whether a farmer who sells seed under the circumstances presented in your request, we must determine whether said farmer does "expose for sale" such seed "by any public sales service."

The Springfield Court of Appeals in State vs. Hogan, 252 S.W. 90, 1.c. 91, approved this definition of "expose for sale":

"* * * An instruction in that case defined 'expose for sale' as the keeping and showing for the purpose of selling, and again defined the term in another instruction to mean 'to place in view with the purpose and intention of selling.' These definitions are not approved or disapproved in the opinion, but we think them correct. * * *."

It is clear this type of selling is by a "public sales service", since the sale is open to the general public, both as sellers and buyers. Therefore, we conclude that a farmer selling agricultural seed through a community auction must comply with Section 266.071, Paragraph 1, Subsection (2), RSMo Cumulative Supplement, 1951.

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Your second question is whether the operator of the "community sales" must determine that seed sold through his service is labeled in accordance with Section 266.071, Paragraph 1, Subsection (2). Because such person does "offer for sale or expose for sale" such seed, and does not fall within the exemptions allowed by Section 266.080, he must not sell unlabeled seed.

CONCLUSION

It is, therefore, the opinion of this office that a farmer offering unlabeled seed for sale by a public sales service is in violation of Section 266.071, Paragraph 1, Subsection (2), RSMo 1949, Cumulative Supplement, 1951, and that the operator of a "community sales service" may also be held criminally liable for selling unlabeled seed in violation of the above section.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

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