

although there is nothing in said communication to show that such taxes were not voluntarily paid.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1019.

LIMBURGER CHEESE—WRAPPED OUTSIDE OHIO WITH WEIGHT NOT MARKED THEREON—NOT VIOLATIVE OF SECTION 13128, GENERAL CODE.

SYLLABUS:

Whether or not a certain package put up in the State of Wisconsin, without the weight of the contents marked thereon, is a violation of Section 13128, General Code, of Ohio, discussed.

COLUMBUS, OHIO, October 11, 1929.

HON. MARCUS C. DOWNING, *Prosecuting Attorney, Findlay, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows:

“I am enclosing a wrapper taken from a cake of limburger cheese made and packed by the Badger Cheese Company of Monroe, Wisconsin. Please render your opinion as to whether or not this wrapper is sufficient to comply with Section 13128, of the General Code of Ohio.”

The wrapper which you enclosed has printed thereon these words:

TRADE MARK	BADGER BRAND Limburger Cheese With That Old Fashioned Flavor American Style
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Badger Cheese Co., Monroe, Wis.
Original Manufacturers and Sole Distributors

STATE OF WISCONSIN DEPARTMENT OF MARKETS

WISCONSIN

FANCY

License No. 1347

The wrapper also bears the registered trade-mark of the company. Nothing further appears thereon.

Section 13128 of the General Code, provides, in part:

"Whoever puts up or packs goods or articles sold by weight or count into a sack, bag, barrel, case or package, or whoever puts up or fills a bottle, barrel, keg, drum, can or other container with any commodity sold or offered for sale by liquid measure, shall mark thereon in plain letters and figures the exact quantity of the contents thereof in terms of weight, measure or numerical count; provided, however, that reasonable tolerances and variations and also exemptions as to small packages shall be established by rules made by the Secretary of Agriculture and shall conform to those of the federal law, and provided, further, that this act shall not apply to such packages or containers, weighted, put up, packed or filled in the presence of the customer."

You will note from a reading of this Section that the offense consists in the putting up of goods sold by weight into packages, without marking in plain letters or figures the exact quantity of the contents thereof in terms of weight.

I assume that the package in question is put up in Monroe, Wisconsin, by the Badger Cheese Company. The gist of the offense, as provided by Section 13128, of the General Code, supra, is not the selling of the package of cheese without the weight being marked upon the wrapper, but the putting up of a package without the weight marked on it, and it is apparent that the package in question was put up in Wisconsin, so therefore the Badger Cheese Company could not be guilty of a violation of Section 13128, General Code, in the State of Ohio.

I am therefore of the opinion that a package put up in the State of Wisconsin, and sold in the State of Ohio, containing goods sold by weight in a wrapper without the weight of the contents marked thereon, is not a violation of the provisions of Section 13128, of the General Code, of Ohio.

Respectfully,

GILBERT BETTMAN,
Attorney General

1020.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND SNEAD & CO., JERSEY CITY, N. J., FOR LIBRARY STACKS FOR LIBRARY BUILDING, OHIO STATE UNIVERSITY, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$12,494.00—SURETY BOND EXECUTED BY THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

COLUMBUS, OHIO, October 11, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Board of Trustees of the Ohio State University, and Snead and Company, of Jersey City, N. J. This contract covers the construction and completion of library stacks for Library Building, Ohio State University, Columbus, Ohio, and calls for an expenditure of twelve thousand four hundred and ninety-four dollars (\$12,494.00).