

AGRICULTURE—WHERE COUNTY FARM BUREAU PURCHASES AGRICULTURAL SEEDS FOR FARMERS—STATUTES GOVERNING SUCH TRANSACTION WHEN TWO COUNTY BUREAUS INVOLVED.

1. *Where the M county farm bureau purchases agricultural seeds as defined by section 5805 G C. from the county agent of C. county or from individual farmers of the latter county, and sells such seeds to the farmers of M. county, such farm bureau of M. county is deemed to be a seed merchant and sales of such seeds to it are within the exemption of subsection B of section 5805-6 G C., as a sale direct to a seed merchant, and such seeds are not required to be labeled as provided in section 5805-2 et seq*

2 *The sales of such seeds, however, by such farm bureau of M county to the farmers of that county are not within the exemptions of section 5805-6 or section 5805-13, and such farm bureau is subject to the provisions of section 5805-1 et seq G C.*

COLUMBUS, OHIO, February 3, 1920

Department of Agriculture, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your recent request for the opinion of this department as follows:

“The following is copy of a communication received from the bureau of markets and marketing, relative to the sale of agricultural seeds within Ohio:

“We have a problem in connection with the marketing of clover seed about which there is some uncertainty on our part as to how to advise the farmers. Have reference to the licensing and selling clover seed but the same principle will probably be involved with other seeds.

Numerous inquiries are coming into the office of the bureau of markets for clover seed in carload lots with an indication that there would be a preference to buy it from the farmers in the state

If, for example, the farm bureau in Madison county, Ohio, should want to buy a carload lot of clover seed to distribute to a number of farmers in that county, in lots of five or ten bushels or may be only a single bushel, and the county agent in Crawford county would advise us that 27 farmers in his county had enough clover seed to make up a carload, which they would sell to any county wanting to buy that much, could we advise the Madison farm bureau that they could buy the Crawford county clover seed, and if so, how would the Crawford county people be able to sell it under the terms of the new seed law? In this case we feel that the farm bureau would be the receiver of the seed from the Crawford county farmers, and the farm bureau in Madison county would be the distributor of the seed when it arrived there

It occurs to us that if the seed delivered in Crawford county could be recleaned in the same mill that it would be of approximately the same quality, although technically this would not be true. Each farmer would receive a statement showing the number of bushels of seed that he had consigned in this carload and would be paid for his seed accordingly. The question is who would take out the license and who would be subject to the regulations provided for in the law, the farmer as individual consignor or the farm bureau as the consignor?”

An early opinion pertaining to the above will be much appreciated.”

It is noted that you state the question on the facts submitted to be:

"Who would take out the license and who would be subject to the regulations provided for in the law, the farmer as individual consignor, or the farm bureau as the consignor?"

Sections 5805-1 to 5805-14 G. C., inclusive (amended senate bill No 11), are pertinent to your inquiry. The sections above referred to are the new act regulating the sale of agricultural seeds and have not been construed by the courts

Section 5805 G C defines agricultural seeds as used in the act. Section 5805-2 G C. prescribes the labeling requirements of agricultural seeds, setting forth in paragraph 2, subsections (a) to (f) the various things which must be plainly stated on the label attached to the container of such seeds

Section 5805-3 G C. defines the term "noxious weeds" as used in the act, while sections 5805-4 and 5805-5 prescribe the labeling requirements for agricultural seeds defined in such sections as mixtures and special mixtures

Section 5805-6 might be termed an exemption section, it beginning with the word "agricultural seeds or mixtures of the same shall be exempt from the provisions of this act"

Then follow paragraphs (a), (b), (c), (d), as follows:

"(a) When possessed, exposed for sale, or sold for food purposes only.

(b) When sold direct to seed merchants or shipped to a general market to be cleaned or graded before being offered or exposed for sale for seeding purposes

(c) When in store for the purpose of recleaning, or not possessed, sold, or offered for sale for seeding purposes within the state

(d) When such seed is grown, sold and delivered by any producer on his premises for seeding purposes by the purchaser himself, unless the purchaser of said seeds demands and receives from the seller at the time of the sale a certificate that said seed is subject to the provisions of this act. If, however, said seed be advertised for sale through the medium of the public press or by circular letter or for delivery through a common carrier said producer shall be considered a vendor, and said seed must be labeled in accordance with the provisions of this act'

For the purposes of this opinion, it is not necessary to quote the rest of the act until we reach section 5805-13, which provides for the payment of a license fee for the purpose of defraying cost of inspection and analyses of such seed,

" * * * before any person * * * or corporation shall sell, offer for sale, or expose for sale in this state any of the agricultural seeds, except as provided in section 6, subsection (d) of this act,
* * *"

Sections 5805-6 and 5805-13 G C are those quoted because it must first be determined whether on the facts stated in your letter sales of such seeds in the manner and for the purposes stated come within the act or require the taking out of a license.

It is to be noted that section 5805-13 G C. requires the payment of a license before any seeds shall be sold or exposed for sale, except:

'as provided in section 6, subsection (d) * * *'

The exemption from the license requirement clearly applies only to the sale of seeds described in that subsection, which it will be remembered is limited to seed,

“grown, sold and delivered by any producer on his premises for seeding purposes by the purchaser himself.”

It may be observed that this is followed by the rather ambiguous provision that

“unless the purchaser of said seeds demands and receives from the seller at the time of the sale a certificate that said seed is subject to the provisions of this act”

It is also to be noted that such exemption shall not obtain if “said seed be advertised * * * for delivery through a common carrier,” in which event not only is license required, but seed so advertised and sold must be labeled as provided in this act.

Section 5805-6 G C, relating exclusively to exemptions as to terms of inclusion by the expression “exempt from the provisions of this act” applies not only to subsection (d) but to subsections (a), (b) and (c) and on its face exempts as to “the provisions of this act” This latter section taken literally is inconsistent with section 5805-13 G C, necessitating resort to interpretation in ascertaining the legislative intent. The proper rule of construction in cases of doubtful exemptions from regulatory excise laws of this character is that the exemptions shall receive a liberal construction in favor of exemption, consistent with the evident purpose of the act as a whole.

Section 5805-13 G C is specific in its terms; it exempts the seeds described in paragraph (d), as above pointed out, from a certain provision of the act, to-wit, payment of a license fee with no reference to exemptions from other parts of the act.

Two meanings may be given to the words “from the provisions of this act” in section 5805-6 G C. First, as though it read “from all of the provisions of this act,” which would include that provision of the act providing for the payment of a license fee as well as the provisions as to labeling such seeds. At this point, it may be noted that this liberal construction would exempt such seeds from the requirements of the whole act.

Second, the other meaning which may be given these words is as if the section read to provide exemptions “from the foregoing provisions of this act,” namely, the labeling requirements which precede this section in sections 5805-2, 5805-4 and 5805-5 G C. The effect of this would be to leave such seeds described in this section, so far as the provisions of section 5805-6 themselves extend, subject to the payment of a license fee, or exempt from the labeling requirements. In support of this latter interpretation it may be urged that by section 5805-6 it was the legislative purpose to exempt the seeds therein described from the labeling requirements but to require the payment of a license fee except as later specifically provided for in the license section. If it had intended to exempt the seeds described in section 5805-6 from all of the provisions of the act, it would have been utterly purposeless afterwards to exempt any of the seeds from the license fee, as provided in section 5805-13 G C, because they would already have been exempted from the whole act.

It is a well recognized rule of statutory construction that related sections will be construed together with a view of giving meaning to both, if possible.

While this act as drawn is ambiguous in this respect, it is concluded that until it is judicially construed otherwise, the second meaning as above suggested is the correct one and that all sales and offering for sale of such seeds will necessitate the payment of a license fee unless it be exempted by section 5805-13 in connection with subsection (d) of section 5805-6.

Your letter indicates that the sale would be to the Madison County Farm Bureau

in which case the seed would not be 'sold or delivered by any producer on his premises for seeding purposes by the purchaser himself,' On this inference, and this opinion is based thereon, we may conclude that such a sale will require a license because it does not come within the exceptions of subsection (d).

It is noted that in the letter from the Bureau of Markets and Marketing it is stated that "the seeds delivered in Crawford county could be recleaned in the same mill, that it would be of approximately the same quality, although technically this would not be true "

This is understood to be the basis of the question if such recleaning would render such a sale exempt from the labeling requirements of the act under section 5815-6 which, in subsection (b) so exempts agricultural seeds "when sold direct to seed merchants or shipped to a general market to be cleaned "

While the meaning of the term "general market" may be uncertain, it is believed that if these seeds were cleaned while in process of delivery in consummation of an agreement, such as supposed in your letter, it would not be shipping "to a general market to be cleaned" within the meaning of that section.

Having arrived at the conclusion that such sale necessitates taking out a license, the question stated in your letter remains:

"Who would take out the license * * * and be subject to the regulations provided for in the law, the farmer as individual consignor or the farm bureau as the consignor?"

In your statement of facts you indicate that the car load lot of seed in the first instance would be purchased by the farm bureau of Madison county

It is believed that in such case the farm bureau in selling the seed to farmers of that county would be amenable to the provisions of this act.

If the Crawford county bureau does not, in fact, actually purchase the seed from the farmers of that county and at no time owns such seed, but merely acts as the agent for such farmers, then there is no sale to it. As pointed out in another opinion, to your department wherein the term "seed merchant" is defined, the regulatory force of this act operates on the sale, offering or exposing for sale of such seeds, and if there is no sale, offering or exposing for sale to such bureau, the law does not apply.

Applying the principle of the opinion referred to, it is concluded that the Madison bureau would be considered a seed merchant and that sales to it would be exempt from label requirements under subsection (b) of section 5805-6. The sales of the Madison bureau, however, as above indicated, would be subject to the provisions of the act, as such sales are not included in the exemption provisions of the act. It is deemed prudent to point out the danger of attempting to establish a hard and fast rule applicable to all cases and that final decision in such cases must depend upon the facts in each case

Respectfully,
JOHN G PRICE,
Attorney-General.