

On the considerations above noted, I am of the opinion that both of the questions presented in your communication should be answered in the negative.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

265.

COLD STORAGE—FOODS—MAY BE MARKED WITH TAG ATTACHED TO CONTAINER OR COVER—WHAT TAG MUST SHOW.

*SYLLABUS:*

*The Director of Agriculture may lawfully adopt regulations permitting the foods described in Section 1155-3 of the General Code to be marked with a tag attached to the container of such food or the cover attached thereto, which tag shall show the date of deposit in and removal from a cold storage warehouse.*

COLUMBUS, OHIO, April 4, 1929.

HON. PERRY L. GREEN, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“I would like to refer to you Section 1155-11 of the Pure Food Laws of Ohio and ask for an opinion as to just how far we could go in making regulations under this section.

We have a request from the cold storage people of Ohio, asking that we make a regulation allowing them to mark all foods put into cold storage with a tag with the date the food was deposited in the warehouse, and it would also bear the date when it was removed.

You will notice if food were allowed to be marked with tags it would be a very easy matter for the tags to be removed when the goods were taken out of storage.

We have told them that we did not feel like assuming the responsibility of allowing this when it seems to us that Section 1155-11 is clear in ‘All food shall at the time it is deposited in any cold storage warehouse bear the date of such deposit plainly stamped thereon.’”

Sections 1155-11 to 1155-19 of the General Code are a part of Chapter 15 and found under the subdivision “Cold Storage”. Said Section 1155-11, to which you refer, provides:

“All food shall at the time it is deposited in any cold storage warehouse bear the date of such deposit plainly stamped thereon. Such food shall also bear a stamp indicating the date of removal. The marking of food as provided in this section shall be under such further regulations as may be prescribed by the Secretary of Agriculture.”

Standing alone, the language of this section is apparently clear and unambiguous. It would appear to be mandatory that each article of food in cold storage should bear the date of deposit “plainly stamped thereon.” Also such food should have a

stamp bearing the date of removal. It is to be observed, however, that the stamping is, by this section, recognized as a "marking" for the reason that the last sentence says that the marking of food provided in this section shall be under such further regulations, etc. The word "marking" is significant, in view of other provisions of law bearing upon this question, and will be hereinafter discussed.

Taken literally, the language of the section alone would require every article of food to have the dates of deposit and removal "stamped thereon". While such a requirement would be feasible with relation to certain articles of food, an examination of the sections of the Code defining the food to be included within the terms of the cold storage act, makes it apparent that literal compliance would be impracticable.

Section 1155-3 of the Code is as follows:

"The term 'food' as used in this act (G. C. Sections 1155-1 to 1155-19), shall mean the fresh flesh of animals, and fresh products therefrom, the fresh flesh of fowls, fish, eggs and butter, which have been stored in a cold storage warehouse."

While it would perhaps be practicable to stamp certain of these food products, the feasibility of stamping each individual fish, egg or quantity of butter plainly may be questioned. In the light of this and other sections of the cold storage act, I have serious doubt as to the intention of the Legislature to require a literal compliance with the requirements of Section 1155-11, *supra*. Thus Section 1155-5 provides:

"The word 'marked' as used in this act (G. C. 1155-1 to 1155-19), shall be taken to mean written, printed, stamped or painted, or any other means whereby words or figures may be indicated in or on a container, or any cover attached thereto."

This section is peculiar in that it contains a definition of the word "marked", which apparently suggests that this word is recurrently used throughout the act. This is, however, not true, as herein pointed out. The word "marking" is used in Section 1155-11, *supra*. Section 1155-12 is as follows:

"It shall be unlawful for any person, firm or corporation, or any agent thereof to sell, or offer or expose for sale, or have in possession with intent to sell at wholesale, any cold storage food, unless there shall be placed on each container thereof, in a conspicuous place in full view of the purchaser, a placard with the word 'wholesome cold storage food' printed thereon, in plain uncondensed gothic letters not less than one-half inch in length. In addition, all such food shall be marked with the date when it is withdrawn from such cold storage warehouse. There shall also be displayed upon every open container containing such food in the same manner, in a conspicuous position, in full view of the purchaser, a placard with the words 'wholesome cold storage food' printed thereon in the same form as above described in this section, when such food is sold from such container or otherwise at retail."

The only other section in which the word "marked" occurs is Section 1155-15, which provides:

"No food shall be sold, or offered or exposed for sale, in this state, which shall have been placed or stored in any cold storage warehouse outside of this state, unless it first shall have been marked as provided for in section twelve

of this act; provided, however, that no such food shall be sold, or offered or exposed for sale, in this state, if the total length of time that such food has remained in cold storage shall exceed the time specified in section thirteen of this act (G. C. Sections 1155-1 to 1155-19).

Taking these sections as a whole, it is extremely difficult to reach a definite conclusion as to just what the intention of the Legislature was as to the marking of cold storage products. This being so, there is warrant for determining just what purpose the Legislature had in view. It is to be observed that Section 1155-12 requires that food removed from the cold storage warehouse and offered for sale shall be marked with the date of withdrawal. It does not require, however, the date deposited. Obviously, if the Legislature had intended that the food itself be stamped, the stamp would continue upon the food in the hands of any person thereafter acquiring. It accordingly seems clear that the purpose to be served by the requirements of Section 1155-11 as to stamping is to enable the inspector to determine the length of time food products remain in the cold storage warehouse, and that in order to effect this purpose, all such food must be *marked* with the date of deposit and removal so that, while the food is in the warehouse, ready determination of the facts may be had. There is no inhibition in the law against the changing of containers. Because of the provisions of Section 1155-12, it seems clear that the food itself will not exhibit the date of deposit and removal when it is thereafter offered for sale.

It must be borne in mind that the cold storage act is one which is a police regulation and is justifiable only so far as reasonable necessity may exist therefor. It constitutes an interference with a legitimate business and the ordinary use of property. As such the statute is subject to a reasonably strict interpretation. As stated in Lewis' Sutherland Statutory Construction on page 1019:

"All statutes for interference with legitimate industries or the ordinary uses of property, or for its removal or destruction for being a nuisance or contributory to public evil, are treated with a conservative regard for the liberty of the citizen in his laudable business, and in the innocent enjoyment of his possessions, and generally the rights of property. Such interferences are cautiously justified on principles of the common law, and only in cases of imperative necessity, or under valid statutes plainly expressing the intent."

Because of the ambiguity in the language of this act, taken as a whole, I believe that the specific language of Section 1155-11 should not receive the literal application which such language, considered separately, would justify. The Legislature apparently considered the stamping therein described as a "marking". By reference to the definition of the word "marked" in Section 1155-5, *supra*, it is to be noted that the requirement of the statute is served by the indication of the required data upon the container or cover either by marking, stamping, painting "or any other means whereby words or figures may be indicated". Under Section 1155-11, *supra*, the marking is subject to such further regulations as you may prescribe. That is, you may fix certain standards as to the location of the marketing, size of lettering, etc., as you deem proper.

Your specific question is as to the use of tags for marking foods in cold storage in view of the fact that tags can be easily removed. While this is true, it is also true that foods may easily be taken from containers. The fastening of a tag to the container or cover would undoubtedly serve the purpose of your inspectors while in the cold storage warehouse. While perhaps, technically speaking, a lettering upon the tag is not a lettering upon the container itself, nevertheless, where the tag is securely

attached to the container, I feel that it is "in or on" the container within the meaning of Section 1155-5, supra, and that this is legitimately one of the "other means whereby words or figures may be indicated in or on a container" within the meaning of that section.

In view of what has been said and in answer to your inquiry, I am of the opinion that the Director of Agriculture may lawfully adopt regulations permitting the foods described in Section 1155-3 of the Code to be marked with a tag attached to the container of such food or the cover attached thereto, which tag shall show the date of deposit in and removal from a cold storage warehouse.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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266.

APPROVAL, BONDS OF VILLAGE OF SEVILLE, MEDINA COUNTY—  
\$18,260.34.

COLUMBUS, OHIO, April 4, 1929.

*Industrial Commission of Ohio, Columbus, Ohio.*

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267.

DISAPPROVAL, BONDS OF WILLIAMS COUNTY—\$17,168.90.

COLUMBUS, OHIO, April 5, 1929.

Re: Bonds of Williams County, \$17,168.00.

*Industrial Commission of Ohio, Columbus, Ohio.*

I have examined the three transcripts relative to the above issue of bonds.

The transcript covering the issuance of bonds in the amount of \$3,257.63, being Fountain Lane Road Improvement, C. H. No. 57, discloses that the notice that estimated assessments have been made was published for two consecutive weeks on the same day of each week, the first publication being on November 1, 1928. Said notice fixed the date of hearing objections to assessments as November 10, 1928, upon which date the board of county commissioners levied such assessments.

The transcript covering the issuance of bonds in the amount of \$8,103.03, being Quaker Church Road Improvement, C. H. No. 48, discloses that the notice that estimated assessments have been made was published for two consecutive weeks on the same day of each week, the first publication being on November 1, 1928. Said notice fixed the date of hearing objections to assessments as November 10, 1928, upon which date the board of county commissioners levied such assessments.