

2123.

FEED STUFFS—USED FOR FEEDING OF RABBITS AND PIGEONS BUT NOT DOGS WITHIN MEANING OF SUCH WORDS IN SECTION 1144, GENERAL CODE—ARTICLES OF COMMERCE USED IN FEEDING DOGS, SUBJECT TO REGULATION.

SYLLABUS:

1. "Feed stuffs" used for the feeding of rabbits and pigeons come within the meaning of feed stuffs as used in Section 1144 of the General Code.

2. "Feed stuffs" used for the feeding of dogs are not included within the meaning of feed stuffs used for live stock in Section 1144 of the General Code. However, if feeds used for the feeding of dogs are articles of commerce such as are enumerated in Section 1144 of the General Code, persons manufacturing, selling or offering for sale, such feed stuffs within this state, must comply with the provisions of Sections 1141 to 1149-1 of the General Code.

COLUMBUS, OHIO, July 22, 1930.

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

DEAR SIR:—I am in receipt of your letter of recent date in which you request my opinion upon the question as to whether or not commercial feeds used for the feeding of dogs, rabbits and pigeons may be regulated by the Department of Agriculture under the provisions of the Ohio "Feed Stuffs" Law, passed April 3, 1929.

The Ohio "Feed Stuffs" Law to which you refer, includes Sections 1141 to 1149-1 of the General Code of Ohio. Section 1141 provides in part as follows:

"Whoever manufactures, sells or offers for sale within this state any feed stuffs or condimental stock or poultry feeds, animal or poultry regulators, conditioners, animal appetizers, tonics, salts or ash, mineral feeds or similar articles shall have stamped or printed on each parcel, lot or container, or on a tag or label affixed thereto in a conspicuous place, a plainly written or printed statement, in the English language, certifying as follows:

(Then follows what the labels or tags shall contain, such as weight of package, brand or trade mark, etc.)

Section 1144 of the General Code defines "feed stuffs" as used in the act, as follows:

"Feed stuffs" in general shall be held to include all feeds used for live-stock and poultry, and the following and similar articles of commerce: linseed meal, linseed oil cake, cotton seed meal, cotton seed cake, pea meal, soy bean meal, coconut meal, rice meal, rice bran, rice polish, peanut meal, bean meal, gluten meal, gluten feeds, dried brewers' grains, dried distillers' grains, dried beet refuse, malt sprouts, yeast feeds, hominy feeds, cereal in feeds, oat feeds, mixed feeds, alfalfa meal, molasses feeds, sugar feeds, buckwheat bran, buckwheat hulls, buckwheat middlings, corn and corncob meal, crushed ear corn, corn bran, corn siftings, wheat bran and screenings, wheat middlings and screenings, ground or unground mixed feeds made from seeds or grains or grain offal, clover meals, dried blood, blood meal, tankage, meat

scraps, beef scraps, meat and bone meal, meat cracklings, raw or steamed bone meal, fish scraps, dried buttermilk, dried skim milk, condensed buttermilk, condensed skim milk, or other animal or vegetable by-products; but such term shall not include hay, straw, whole seeds, unmixed meals made directly from the entire grains of wheat, rye, barley, Indian corn, oats, buckwheat, broom corn, pure wheat bran or pure wheat middlings not mixed with other substances, when sold separately as distinct articles of commerce, nor entire grains of corn, oats, wheat, rye, barley, buckwheat, ground together, nor wheat bran and wheat middlings not mixed with other substances."

The first question presented in a discussion of your inquiry is whether or not feeds for dogs, rabbits and pigeons are included in that part of the definition of "feed stuffs" in Section 1144 which provides that "feed stuffs" in general shall be held to include all feeds used for live stock and poultry. "Live stock" is not defined by the Legislature, therefore, it must be construed according to its ordinary usage. In Webster's New International Dictionary "live stock" is defined as follows:

"Domestic animals used or raised on a farm, especially cattle, sheep, hogs, etc."

In 38 Corpus Juris, page 7, the author defines live stock as domestic animals kept for farm purposes, especially marketable animals as cattle, horses and sheep. The term "live stock" is not generally used or understood to include dogs. However, rabbits are often raised on farms for food and market, and I believe they may be included in the term "live stock."

Poultry is defined as domestic fowls raised for the table or for their eggs or feathers, and includes pigeons if raised for the table. Words and Phrases, Second Series, Vol. 3, Page 1105. The word "poultry" includes pigeons. Words and Phrases, Vol. 6, First Series, Page 5476.

Since rabbits are included in the definition of live stock, and pigeons in the definition of poultry, it follows that feeds used for rabbits and pigeons are included within the meaning of the definition of feed stuffs as used in Section 1144 of the General Code. However, feed stuffs used for feeding dogs are not included in feeds used for live stock and therefore we must examine other provisions of Section 1144 to determine whether or not the Legislature intended to include such feed stuffs to be regulated by the provisions of this act.

You will note that "feed stuffs" as defined in Section 1144 not only includes all feed stuffs used for live stock or poultry and the articles enumerated in that section, but also includes any article of commerce similar to those enumerated. When Section 1144 of the General Code was enacted April 15, 1913 (103 O. L. 319) it provided in part as follows:

"The term 'feed stuffs' as used in this act includes the following and similar articles of commerce: linseed meal, cotton seed meal, pea meal, cocoa-nut meal," etc.

This section was amended April 21, 1915, (106 O. L. 157) to read as follows:

"'Feed stuffs' in general shall be held to include all feeds used for live stock and poultry, and the following and similar articles of commerce:

linseed meal, linseed oil cake, cotton seed meal, cotton seed cake, pea meal, coconut meal," etc.

It will be observed that the Legislature when it amended Section 1144 in 1915 added the provision that "feed stuffs" in general shall be held to include all feeds used for live stock and poultry. This indicates that the Legislature, by enumerating the various articles in Section 1144 of the General Code did not do so to amplify upon the meaning of feed stuffs used for live stock and poultry, but rather intended to enlarge the scope of this legislation to include not only all feeds used for live stock and poultry but also all articles of commerce enumerated in the section. This leads me to conclude that any feed stuffs which are articles of commerce such as are enumerated in Section 1144 are included within its provisions even though the feeds are not used for live stock and poultry. Therefore, if the feeds used for the feeding of dogs are articles of commerce such as are enumerated in Section 1144, persons manufacturing, selling or offering for sale, such feed stuffs within this state, must comply with the provisions of Section 1141 to 1149-1 of the General Code.

In specific answer to your inquiry, I am of the opinion:

1. "Feed stuffs" used for the the feeding of rabbits and pigeons come within the meaning of feed stuffs as used in Section 1144 of the General Code.

2. "Feed stuffs" used for the feeding of dogs are not included within the meaning of feed stuffs used for live stock in Section 1144 of the General Code. However, if feeds used for the feeding of dogs are articles of commerce such as are enumerated in Section 1144 of the General Code, persons manufacturing, selling or offering for sale, such feed stuffs within this state, must comply with the provisions of Sections 1141 to 1149-1 of the General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2124.

CLAIM—FOR LOSS OR INJURY TO ANIMALS—CLAIMANT AND WITNESSES NEED NOT PERSONALLY APPEAR BEFORE TOWNSHIP TRUSTEES, BUT MAY FILE AFFIDAVITS—EXCEPTION—DOG WARDEN UNAUTHORIZED TO ADMINISTER OATHS.

SYLLABUS:

1. *A person who has properly filed a claim supported by affidavit, for loss or injury to horses, sheep, cattle, swine, mules and goats, injured or killed, is not required under the provisions of Section 5840, et seq., General Code, to appear in person and testify at a hearing upon such claim before the township trustees, and statements as to the nature of the loss or injury complained of may be supported by affidavits rather than the oral testimony of at least two freeholders who viewed the results of the killing or injury, which affidavits may be made before any officer authorized to administer oaths. However, the township trustees may require parol testimony of the claimants and other witnesses if they so desire.*

2. *A dog warden has no authority to administer oaths.*

COLUMBUS, OHIO, July 22, 1930.

HON. C. LUTHER SWAIM, *Prosecuting Attorney, Wilmington, Ohio.*

DEAR SIR:—I am in receipt of your letter which, omitting the portions of statutes quoted by you, reads as follows: