

Code, are not in their entirety repealed by the Election Laws of the State of Ohio as enacted by the 88th General Assembly, but such provisions as contained in these sections of the old law relating to the initiative and referendum as to municipalities as are inconsistent with the new law are repealed by implication.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1548.

AGRICULTURAL SEEDS—SAMPLES IMPROPERLY LABELED—WHAT
CONSTITUTES SEIZURE BY AGRICULTURAL DIRECTOR—VENDOR'S
SIGNATURE TO SEIZURE BLANK UNNECESSARY.

SYLLABUS:

1. *In order to constitute a valid seizure under the provisions of Section 5805-9, there must be an open, visible possession claimed and authority exercised by the officer over the seizure. However, it is not necessary to actually dispossess the person selling or offering for sale seeds not properly labeled, if the person upon notice submits to the order of the Department of Agriculture by removing the seeds so that they will not be sold or offered for sale.*

2. *The acceptance of service of notice by the vendor of seeds in violation of law is for the purpose of providing proof that the vendor actually received notice and the failure to secure his signature on the notice will not invalidate such notice.*

COLUMBUS, OHIO, February 21, 1930.

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

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

“I am requesting an interpretation of Section 5805-9 of the General Code of Ohio, particularly that part contained in the last sentence relating to the placing of seizures.

In your opinion what does this sentence really mean? What procedure is legal and can the seizure be considered valid when it is legal rather than physical. I am enclosing one of our seizure blanks that has been used in the past. Our procedure has been when samples were found not properly labeled to fill out a seizure blank, asking the proprietor or some representative of his to sign the acceptance at the bottom, handing him a copy and require him to withdraw the seed from sale. We have considered this as completed when he has removed the sacks to a back or store room.

The prosecuting attorney of ----- County holds that these seizures to be legal must be physical. In other words, the seeds must be taken from the premises of the dealer and held until proper labeling has been effected. I would very much appreciate clearing up this matter. Also, is it necessary for us to secure the signature of the owner or his agent to the seizure blank? We, of course, should leave a copy with him, but is it necessary to have his signature and acceptance?”

Sections 5805-1 to 5805-14, inclusive, of the General Code, provide for the regula-

tion of the sale of agricultural seeds. Section 5805-1 defines agricultural seed, Sections 5805-2, 5805-3 and 5805-5, provide that seeds sold or offered for sale should be labeled, and these statutes further set forth in detail what statements the labels shall contain. Section 5805-9, to which you refer in your letter, provides as follows :

“The Director of Agriculture shall enforce the provisions of this act and shall be empowered to adopt such reasonable rules and regulations as may be deemed necessary in order to secure its efficient enforcement. It shall be the duty of the Director of Agriculture to publish or cause to be published the results of all prosecutions for violations or non-compliance with the provisions of this act, the examinations, analyses and tests of any and all samples of agricultural seeds or mixture of such seeds drawn as provided for in Section Eight, together with the dates such tests were made. The Director of Agriculture is empowered to seize any seed sold in or offered for sale in Ohio which is not properly labeled and hold same until proper labeling is effected by the shipper or seller of such seed.”

“Seizure” is defined in Bouvier’s Law Dictionary as follows :

“The taking possession of goods for a violation of public law, as the taking possession of a ship for attempting an illicit trade.”

“Hold” is defined in Webster’s New International Dictionary as follows :

“To retain in one’s keeping ; to maintain possession of or authority over ; not to give up or relinquish.

Mr. Justice Story in the case of *The Josefa Segunda*, 23 U. S. 312 at page 326, in describing what constitutes a valid seizure says :

“There must be an open, visible possession claimed, and authority exercised over a seizure. The parties must know that they are dispossessed and that they are no longer at liberty to exercise any dominion over their property. It is true a superior physical force is not necessary to be employed if there is a voluntary acquiescence in the seizure and dispossession. If the party, upon notice, agrees to submit, and actually submits, to the command and control of the seizing officer, that is sufficient.”

The definitions of “seize” and “hold” do not indicate that the officer must actually take possession of the property by removing it from the custody of the owner, but it is sufficient if he makes an open and unequivocal assertion of dominion over the property and maintains authority over it. While it is true that there are seizures which require that the officer actually dispossess the owner of his personal property, this is so because of the express provisions of the statutes under which the seizure is made, or for the purpose of protecting the rights of third parties. However, in the matter before me, the only purpose of the seizure under the provisions of Section 5805-9, is to effect a compliance with the law relative to the labeling of seeds and this can be accomplished without removing the seeds from the premises of the owner and the rights of third parties cannot thus be affected.

With reference to your inquiry as to whether or not it is necessary to secure the signature of the owner or his agent to a written notice of seizure served upon him, it is sufficient to say that the acceptance of service of notice by the vendor of seeds in violation of law is for the purpose of providing proof that the vendor actually re-

ceived notice that the seeds were seized, and while it is good practice to obtain his signature, nevertheless the failure to do so will not defeat the notice.

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

1. In order to constitute a valid seizure under the provisions of Section 5805-9, there must be an open, visible possession claimed and authority exercised by the officer over the seizure. However, it is not necessary to actually dispossess the person selling or offering for sale seeds not properly labeled, if the person upon notice submits to the order of the Department of Agriculture by removing the seeds so that they will not be sold or offered for sale.

2. The acceptance of service of notice by the vendor of seeds in violation of law is for the purpose of providing proof that the vendor actually received notice and the failure to secure his signature on the notice will not invalidate such notice.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1549.

PARTITION FENCE—ADJACENT LANDOWNER REQUIRED TO CUT
DOWN SUCH SMALL TREES AS COME WITHIN TERM "BRUSH."

SYLLABUS:

Under the provisions of Section 5942, General Code, the owner of land adjacent to a line or partition fence is required to cut only such small trees as come within the meaning of the term "brush" as used in this section.

COLUMBUS, OHIO, February 21, 1930.

HON. JESSE K. BRUMBAUGH, *Prosecuting Attorney, Greenville, Ohio.*

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

"I have been asked to construe that part of Sec. 5942 of the General Code which pertains to brush, briars, etc., along or adjacent to partition fences.

"One of two adjacent land owners has petitioned the Board of Trustees of one of our townships for the cutting down of stripling growths on and within a strip four feet wide of the adjacent tenant's land. For the past ten or fifteen years this fence row has been permitted to grow up with all kinds of brush, briars, etc., and among them grew some trees of the various varieties found in this section of the state. About two years ago the land owner upon whose land this condition existed removed all of the small growth and left remaining a number of small trees which were voluntary growth, and claimed that he was not obliged to remove them under and by virtue of the section above mentioned.

"At this time, perhaps the largest of these trees is from three to four inches in diameter.

"Kindly give me an expression as to whether a condition of this kind, in your opinion, is within the meaning of Sec. 5942 of the Ohio General Code, and whether the Township Trustees would be within their rights in ordering them removed."

Section 5942, General Code, provides as follows :