

918.

AGRICULTURE—VEGETABLE SEEDS WHEN SOLD TO GARDENERS
FOR PURPOSE OF PLANTING TO RAISE FOOD—SECTIONS 5805-1
AND 5805-6 G. C. CONSTRUED.

Where vegetable seeds, which are included in the terms of section 5805-1, (108 O. L., 52), are sold to gardeners for the purpose of planting them to raise food, the seller is not exempt from the requirements of section 5805-6 on the ground that such seeds are sold for food purposes only.

COLUMBUS, OHIO, January 6, 1920.

The Department of Agriculture, Bureau of Feeds and Fertilizers, Columbus, Ohio.
GENTLEMEN:—Acknowledgment is made of the receipt of your recent letter, as follows:

“We are in receipt of a letter from the L. Seed Company, Columbus, Ohio, relative to the enforcement of the new agricultural seed law, as follows:

‘In regard to the matter of beans and peas (vegetable) having to have a germination test placed on the label, when more than 10 pounds are sent to persons in Ohio, as these beans and peas (vegetable seeds) are sold by us to gardeners over the state, and they in turn raise them for the food they sell, i. e., in pods, we feel that they can be classed under the heading, for food purposes, and therefore exempt under the law. Am I right?

‘Would be pleased to have a decision on this so we can go ahead and be or feel safe.’”

This department is advised that you desire its opinion upon the questions raised in the letter which you quote in your letter to this department.

It is noted that the question raised by your correspondent and in turn submitted to this department is, whether the vegetable seeds therein named come within the exemptions from the operation of the agricultural seed law, enacted as amended in Senate Bill No. 11 (108 O. L., 52). Sections 1 and 6 of that bill, et seq., are now numbered as sections 5805-1 and 5805-6 G. C.

Section 5805-1 contains the definition of agricultural seeds and agricultural seed, as used in that act, and the question might be raised (but is not decided by this opinion) as to whether the beans and peas referred to come within the definitions of agricultural seeds or seed, as contained in this section. However, as their inclusion in the terms of this section is assumed by your correspondent, and as this question is not raised by your correspondent, it is not deemed proper at this time to consider it.

As to the exemptions from the operation of this law, it is found in section 5805-6 G. C. that

“Agricultural seeds or mixtures of the same shall be exempt from the provisions of this act.

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

To construe that part of this section reading “for food purposes only,” in determining the legislative meaning, it should be noted that the ultimate purpose of

all possession and sale of agricultural seeds is for the production of food. To illustrate, alfalfa seed (contained in the definition of section 5805-1 as agricultural seed) is sold for seeding purposes, when harvested to be fed to fatten cattle, with the ultimate purpose of producing beef. In this case it is suggested that the first purpose of the sale is seeding and that the food purpose, as used in this act, may be said to exist when the question of its disposition or consumption is decided, which occurs after its planting and harvesting. On the other hand, an illustration of the sale of such agricultural seeds for "food purposes only" may be given in the sale of wheat, the immediate use of which is for food, through the process of milling into flour. In this case there is no intermediary commercial use or purpose between the sale and its use and consumption as food. In the case stated in your letter, a seed company sells vegetable seed to "gardeners over the state and they in turn raise them for the food they sell" and it is noted that because of this use to which the purchaser puts such seeds, your correspondent is of the opinion that they should be classed as agricultural seeds sold "for food purposes only." Here it is to be noted that the seeds are not themselves used for food purposes only, but are used for seeding in order that, when planted, the food thereby produced may be sold.

In view of the term of this exemption, it is concluded that such seeds as are contained in the definition of this act and which are sold for seeding purposes in the manner set out in your letter, are not sold for "food purposes only" as contemplated by this act.

Respectfully,

JOHN G. PRICE,
Attorney-General.

919.

SCHOOLS—VILLAGE SCHOOL DISTRICT CREATED IN RURAL DISTRICT—WHEN TERRITORY OUTSIDE OF VILLAGE IS LESS THAN SIXTEEN SQUARE MILES AND WHERE TERRITORY IS SIXTEEN SQUARE MILES OR MORE—WHERE FORMER TERRITORY ATTACHES TO VILLAGE DISTRICT LATTER IS A RURAL SCHOOL DISTRICT.

When a village school district is created in a rural district, the territory outside of the village is annexed to such village district for school purposes, provided such annexed territory has less than sixteen square miles. Where the territory remaining in the rural district, after the creation of the village, is sixteen square miles or more, such territory retains its identity as a rural school district.

COLUMBUS, OHIO, January 6, 1920.

HON. FRANK B. PEARSON, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your request for an opinion upon the following question:

"What is the meaning of the words in the statute 'provided such territory has an area less than sixteen square miles'? Does it mean the territory of what was originally the rural district before the village was formed,