

enclosed for further appropriate action on your part and upon the part of the Auditor of State.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3987.

MILK—PRODUCERS MAY EMPLOY COMMON DESIGNATION TO MARK MILK BOTTLES.

SYLLABUS:

A number of producers of milk may mark and designate milk bottles with a common designation, under section 13169 of the General Code.

COLUMBUS, OHIO, February 28, 1935.

HON. VERNON L. MARCHAL, *Prosecuting Attorney, Greenville, Ohio.*

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

“Section 13169 of the General Code says:

‘Any person, firm or corporation engaged in the manufacturing, bottling or selling of milk, cream, etc., and using in the manufacture, sale and delivery of the same any bottles, etc., or other containers, may mark and designate such bottles, etc., and other containers with his or its name or other mark or device branded, stamped, engraved, etched, blown or otherwise produced upon the same, and file in the office of the Secretary of State;

Now, I would appreciate your rendering this office an opinion under the above Section as to whether or not a number of independent milk producers might be allowed to use a bottle with a common brand or stamp upon the same, if they were to file such application with the Secretary of State in the name of all of such producers who were intending to use said brand or stamp; or whether each would be required to file an independent brand or stamp for use on the bottles they are each using in the distribution and sale of milk and cream in this County?’”

The section, a part of which you quote, also provides:

“When any such person, firm or corporation shall have complied with the provisions of this section, he or it shall thereupon be deemed the proprietor of such name, mark or device and of every such bottle, * * * or other container upon which may be branded, stamped, etched, engraved, blown or otherwise produced upon the same, such mark or device.”

An analysis of section 13169, *supra*, discloses that the purpose of its enactment was to provide protection to any person, firm or corporation engaged in the business of the manufacture, sale or distribution of the products mentioned therein. In the case of *State vs. Doyle*, 17 O. C. C. (N. S.), 289, it was held:

"The object of the legislature is to prevent the public from being misled as to the identity of the vendor."

Obviously, the question you propound is whether such a group as you mention would be a "firm or corporation" under the terms of the section; or, probably, the question is whether a number of persons may make joint application under the section, as apparently the producers to whom you refer are not as yet organized.

In connection with the problem at hand, it will be noted that the section you mention is a part of Chapter 16 of Part Fourth of the General Code. Section 12368, General Code, being the first section of said Part Fourth, provides, among other things, that words "in the singular number include the plural number". It is my judgment that regardless of the time of enactment of section 13169, section 12368 should be given consideration.

It is thought to be a fundamental principle of law that individuals may do collectively that which they may do alone, unless there are statutory inhibitions against such conduct, or such action is against public policy.

It may be noted in connection with your inquiry that section 6240-1, et seq., of the General Code provides for a very similar method of registering devices and trade marks, etc., as that provided for in section 13169.

While the particular question presented seems not to have been decided, it is my opinion that a number of producers of milk may mark and designate milk bottles with a common designation, under section 13169 of the General Code.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3988.

DISAPPROVAL, BONDS OF SHEFFIELD LAKE VILLAGE SCHOOL DISTRICT,
LORAIN COUNTY, OHIO, \$2,938.21.

COLUMBUS, OHIO, March 1, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN:—I have examined the transcript of the proceedings relating to the above bond issue.

RE. *Bonds of Sheffield Lake Village School Dist., Lorain County, Ohio,*
\$2,938.21.

It is proposed to issue these bonds under House Bill No. 11 of the third special session of the 90th General Assembly. The transcript shows that this district has outstanding bonds in the amount of \$6300.00, which were issued under House Bill No. 17 of the first special session of the 90th General Assembly. From the financial statement it appears that the amount of these bonds, which is actually in excess of the debt limitation for unvoted indebtedness, is greater than the amount of the net floating indebtedness as of July 1, 1934, as certified by the State Auditor. It follows, therefore, that this district cannot issue bonds under said House Bill No. 11.

It is suggested that this district resubmit its financial statement to the State Auditor