

EGGS:

COMMISSIONER OF AGRICULTURE: Authority of the Commissioner of Agriculture over persons or firms who handle eggs.

October 15, 1941

Mr. John W. Ellis
Commissioner of Agriculture
Jefferson City, Missouri



Dear Mr. Ellis:

This is in reply to your letter of recent date wherein you request an opinion from this department on the following statement of facts:

"This Department needs a ruling upon the following questions, in relation to the Egg Law in Article 4, Chapter 58, R. S., 1939, which law is administered by the Commissioner of Agriculture, under Article 1, Chapter 102, R. S., 1939:

1. Can the Commissioner require a license under Section 9908 from a hatchery that sells its off-size-grade fresh eggs and incubator reject eggs?
2. Can the Commissioner license a dealer who traffics mainly in incubator and candlingroom reject eggs?
3. Attached hereto are the Egg Law Regulations, adopted March 1, 1940, calling your attention especially to Regulations 6 and 7. Also see herewith copies of letters from two large hatcheries, protesting the requirements of Regulations 6 and 7. The question raised by these and other related protests is: 'What legal Regulation, if any, can be promulgated that would permit a licensed hatchery to sell and ship undenatured reject shell eggs to a licensed dealer (if licensable) in correctly labeled and sealed cases, showing that such eggs are unfit for human food and are shipped for processing into tanner's stock?'

4. Since the foregoing questions 1, 2 and 3 were written, we now have additional reason to ask for an interpretation of the concluding sentence in Section 9912, as to shipping shell eggs 'to tanners' under seal. Does this mean that such undenatured shell eggs can be shipped under seal to tanners only, and not to dealers?"

Article 4 of Chapter 53, R. S. Mo. 1939, contains the laws relating to eggs. From an examination of this article it will be seen that two acts of the General Assembly make up the provisions of this article. Sections 9905 to 9911 inclusive are from House Bill 677, Laws of Mo. 1919, p. 364, entitled:

"AN ACT to provide for the regulation of traffic in eggs; to provide for the licensing of dealers in eggs; to prevent fraud and misrepresentation in dealing in eggs and to prevent the sale of eggs unfit for human food; and fixing penalties for violations; with an emergency clause."

This act also contained an emergency clause which is as follows: (Sec. 9, p. 366, Laws of Mo. 1919)

"There being no adequate law in this state regulating the traffic in eggs, and the sale of unwholesome eggs constituting a menace to the public health and endangering human life, creates an emergency within the meaning of the Constitution, therefore this act shall take effect and be in force from and after its approval by the governor."

This act was approved on May 26, 1919. It will be noted that the emergency clause of this act stated that "there being no adequate law regulating the traffic in eggs, and the sale of unwholesome eggs constituting a menace to the public health," so it would seem that one of the primary purposes of this act was to license all dealers in eggs and prevent fraud and misrepresentation in dealing with them.

Section 9912 to Section 9915, inclusive, are taken from C. S. H. B. 833, Laws of Mo. 1919, p. 356, entitled:

"AN ACT providing for the shipment, handling and sale of eggs, for food or manufacturing purposes, the inspection of egg breaking establishments, and regulating same by the state food and drug commissioner, prohibiting the retaining of unwholesome eggs, unless the same are case.

thereof, ...

This act was passed with the following emergency clause (Sec. 6, p. 358):

"There being no adequate law in this state regulating the egg breaking establishments which in many instances are conducted in such a way as to constitute a menace to the public health, an emergency is hereby declared to exist within the meaning of the Constitution, therefore, this act shall be in force and effect from and after its approval by the governor."

This act was also approved on May 26, 1919. The emergency clause in this act refers particularly to egg breaking establishments. The provisions of these two acts may overlap some but we do not find a conflict therein. Since both acts were passed at the same session and approved on the same day, we must assume that the Legislature and the Governor did not consider them to be conflicting.

Referring to your first question as to whether or not the Commissioner of Agriculture can require a license under Section 9908, R. S. No. 1939, from a hatchery that sells its "off-size-grade and incubator reject" eggs, this section reads as follows:

"That for the purpose of enforcing the provisions of this article it is hereby required that ten days after this article takes effect, any person, firm or corporation that shall engage in the business of buying, selling, dealing in or trading in eggs, including those retailers who buy direct from the producer and who sell in lots of one case or more, shall procure a license from the state food

and drug commissioner to conduct such business. Such officer upon receipt of proper application upon forms such as he may prescribe, accompanied by an annual license fee of two dollars (\$2.00) for a person, firm or corporation that shall engage in the business of buying, selling, dealing in or trading in eggs in lots of less than one carload shall thereupon issue to such person, firm or corporation an annual license to engage in such business; and such person upon receipt of a proper application upon forms such as he may prescribe accompanied by a license fee of ten dollars (\$10.00) for a person, firm or corporation that shall engage in the business of buying, selling, dealing in or trading in eggs in lots of one carload or more, shall thereupon issue to such person, firm or corporation an annual license to engage in such business."

It will be noted that the first sentence in this section states that "for the purpose of enforcing the provisions of this article", etc. The word "article" used in this section might not be construed to include those sections of the article which are taken from C. S. H. B. 333, Laws of Mo. 1919, p. 356, which are included in Sections 9912 to 9916, R. S. Mo. 1939, but, without doubt it does include Sections 9905 to Section 9911 of Article 4, Section 9905 reads as follows:

"That no person, firm or corporation shall sell, or have in his possession with intent to sell, offer or expose for sale, or traffic in, any egg unfit for human food, unless the same is broken in shell and then denatured so that it cannot be used for human food. For the purposes of this article, an egg shall be deemed unfit for human food if it be addled or mouldy, a black rot, a white rot, or a blood ring; or if it has an adherent yolk, or a bloody or green white; or if it be incubated beyond the blood ring state; or if it consist in whole or in part of a filthy, decomposed or putrid substance."

Section 9906 reads as follows:

"That no person, firm or corporation shall, in buying or selling eggs, take or give a

greater or less dockage for eggs unit for food as defined in section 9905 than the actual dockage which has been determined by the careful candling of the eggs so purchased or sold, and he shall keep such candling records as may be required by the rules and regulations of the state food and drug commission. All such records shall be open at all reasonable times for examination by the state food and drug commissioner or inspectors of the state food and drug department. The term 'candling' as used herein shall be construed to mean the careful examination, in a partially dark room or place, of the whole egg by means of a strong light, the apparatus and method employed to be such as shall be approved by the state food and drug commissioner. Every person, firm or corporation engaged in the business of buying eggs in this state for resale or consignment shall provide and maintain an adequate place for the accurate candling of eggs and a suitable place for the proper handling of eggs which are intended to be used for human food."

Since this law provides a penalty for its violation, it should then receive a strict construction.

Section 9905 prohibits any traffic in eggs unfit for human food unless the same are broken in shell and denatured. Section 9912 seems to have made an exception to Section 9905 by permitting eggs known as "yolks stuck to the shell, heavy blood rings, partially hatched, moldy eggs, black spots, black rots, or any other egg of an unwholesome nature to be cased and labeled" may be shipped to tanners under seal for manufacturing purposes only.

In reading this entire article, it will be seen that eggs unfit for human food may be sold on only two occasions, -- be broken in the shell and then denatured as provided in Section 9905 and under Section 9912 they may be cased and labeled and sold, or they may be broken in the shells and then denatured so as to be rendered unfit for human food and sold, or they may be sold within the shell or broken and dried and shipped to tanner under seal for manufacturing purposes only.

Section 9913 provides as follows:

"Eggs, exclusive of the above named varieties, which are not intended for sale to the trade in shell form, are hereby declared to be 'breaking stock.' 'Breaking stock' when packed in cases, sealed with proper identifying strips that have been approved by the state food and drug commissioner, may be shipped to licensed egg-breaking establishments. Brokers and commission men or ordinary receivers of eggs, who have eggs shipped to them in these breaking stock identified cases, may break the seal and examine the stock, but they must reseal the identifying strip where it is cut with another identifying strip which carried their name and address, and the date upon which they inspected the eggs. They will be held responsible for any tampering with the contents of the identified cases. It shall be unlawful for any person, firm or corporation to have in his or its possession, with intent to place them on the market for food purposes, eggs known as yolks stuck to the shell, heavy blood rings, partially hatched, mouldy eggs, black spots, black rots or any unwholesome eggs, unless the same be cased and labeled or broken in the shell and then denatured so as to render them unfit for human food."

This section prohibits the possession of eggs such as those described as unfit for human food in Sections 9905 and 9912 where the possession of same is with the intention of placing them on the market for food purposes, unless the same are cased and labeled, or broken in the shell and then denatured so as to render them unfit for human food.

So, it will be seen that the primary purpose of all these sections is to prohibit eggs unfit for human food from being placed on the market, and they only permit possession of such eggs when the same are cased and labeled or broken in the shell and denatured so as to render them unfit for human food.

The first sentence of Section 9906, supra, requires the person who buys or sells eggs unfit for food to keep records such

as may be prescribed by the Commissioner of Agriculture. It also prohibits such person from taking or giving a greater or less dockage for such eggs than the actual dockage as has been determined by the careful candling of the eggs so purchased or sold. This section indicates that the lawmakers intended to give the commissioner supervision of such dealers and they therefore provided, by Section 9908, for the licensing of them.

In our research on these questions, we did not find that these acts have been before our courts for construction. Under the general rules of construction, however, the officers administering such statutes are bound by their provisions only.

CONCLUSION

From the foregoing, it is the opinion of this department that:

1. The Commissioner may require a license from a hatchery which sells its off-size-grade fresh eggs and incubator reject eggs in order that he may enforce the provisions of Section 9908.
2. That the Commissioner, for the purpose of enforcing the provisions of Sections 9905 to 9911, inclusive, would be authorized to require a license of a dealer who traffics mainly in incubator and candlingroom reject eggs. The reason for requiring such a license would be to compel such dealers to comply with the first sentence of Section 9908, supra.
3. In answer to your third question, it is our opinion that the Commissioner of Agriculture may promulgate a rule providing for the casing and labeling of eggs known as "yolks stuck to the shell, heavy blood rings, partially hatched, mouldy eggs, black spots, black rots, or any other eggs of an unwholesome nature which are to be shipped or disposed of for manufacturing purposes or for food.
4. In view of our ruling in Section 3, supra, we are of the opinion that the eggs described therein may be shipped to persons other than tanners, if the Commissioner, by rule and regulation has provided for the proper casing and labeling of same.

Mr. John W. Ellis

-8-

October 15, 1941

We are further of the opinion that the casing and labeling of such eggs; or if they are broken and then denatured so as to be rendered unfit for human food, complies with the statute on disposing of such eggs.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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