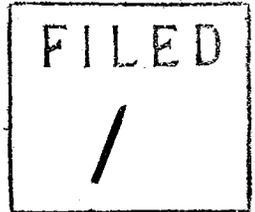


DEPT. OF AGRICULTURE-- : Neither agricultural nor vege-
AGRICULTURAL & VEGETABLE SEEDS: table seeds may be sold or of-
: fered for sale in the State of
: Mo. under Sec. 14271, Art. 16,
: Chap. 102, R.S. Mo. 1939, nor
: may rules or regulations be
: adopted under Sec. 14272, unless
December 16, 1946 such seeds are free from the
seeds of Canada thistle,
Johnson grass, and field
Bindweed (convolvulus arvensis)

Department of Agriculture
Jefferson City, Missouri

12/14
Attention: Honorable S. Y. Roth
Director Seed Division



Gentlemen:

This will acknowledge your letter of recent date to this Department requesting an opinion on the subject matter covered in your letter. Your letter is as follows:

"Will you please give us a written opinion as to whether or not Regulations #10 and 11, relative to tolerances on noxious weeds, apply to Section 14271, of the Missouri State Seed Law.

"We have held that the tolerances do not apply to the above mentioned Section and that Agricultural and Vegetable seed cannot be sold in the State of Missouri if they contain any Canada thistle, Johnson grass or field Bindweed seed whatsoever.

"An opinion at your earliest convenience will be appreciated."

Your letter specifically requests the construction by this Department of the terms of Section 14271, R.S. Mo. 1939, and the application thereto of regulations #10 and #11 in the booklet of regulations adopted by your Department.

Section 14272, upon which you base your rules set forth in said booklet for the enforcement of Article

16 of Chapter 102, R. S. Mo. 1939, must be read and applied in connection with Section 14271, the same Article, same Chapter.

Said Section 14271, is as follows:

"It shall be unlawful for any person, firm, or corporation to knowingly sell, offer or expose for sale or distribution in this state, for the purpose of seeding, any of the agricultural seeds as defined in this article, unless the said seeds are free from the seeds of Canada thistle, Johnson grass, and field bindweed (*convulvulus arvensis*)."

Manifestly and necessarily, regulations #10 and #11 in the booklet issued October 1, 1944, by your Department, are an interpretation of the power and authority, delegated to the Department of Agriculture in Section 14272, looking to the enforcement of Article 16 and Chapter 102, R. S. Mo. 1939. Indeed, the pamphlet is direct and clear on that point since it states in the preamble thereto on page 3, the following:

"The following 'regulations' are adopted by John W. Ellis, Commissioner of Agriculture, under the authority granted by Section 14272 of Article 16, Chapter 102, R.S. Mo. 1939."

Section 14272, R.S. Mo. 1939, under which your said regulations #10 and #11 are promulgated, is as follows:

"The duty of enforcing this article and carrying out its provisions and requirements shall be vested in the commissioner of agriculture. The said commissioner, upon notice to the seed trade of this state, through the agricultural bulletins of the department and otherwise, shall be empowered to adopt such reasonable 'rules and regulations' necessary to secure the efficient enforcement of this article:

Provided further, that the said commissioner shall have authority to maintain a laboratory with necessary equipment within biennial appropriations, and is authorized to assign any of his employees without additional salary to aid in the administration of this article, and shall further be required to secure an analyst or analysts and other necessary employees and designate reasonable remuneration therefor, for the proper enforcement and carrying out of the provisions of this article. It shall be the duty of the said commissioner within his discretion and appropriations to publish or cause to be published the results of the examination, analysis and test of any sample or samples of agricultural seed or mixture of such seed, drawn as provided for in this section, together with any other information said commissioner may find advisable."

Keeping in mind that said Section 14272, as quoted above, directs that your Department "* * * shall be empowered to adopt such reasonable 'rules and regulations' necessary to secure the efficient enforcement of this article: * * * ", it is clear that said "rules and regulations" to be adopted and which have been adopted by your Department, may permit and prescribe the method of doing all of the things under said rules that are not forbidden in any other Section of said Article 16. Turning again to said Section 14271, we observe that it expressly prohibits the sale of "any of the agricultural seeds as defined in this article, unless the said seeds are free from the seeds of Canada thistle, Johnson grass, and field bindweed (*convulvulus arvensis*)."

Regulations #10 and #11 set forth in said booklet of your Department under said Section 14272, are prohibited, we think, from including any seeds to be sold under the terms of said Section 14271, "unless the said seeds are free from the seeds of Canada thistle, Johnson grass, and field bindweed (*convulvulus arvensis*).", and in determining the number or rates of occurrence for tolerated noxious weed seeds authorized to be sold under said regulations #10 and #11.

Said Section 14271 prohibits the inclusion of the seeds banned by it in the sale of "* * * any of the

agricultural seeds as defined in this article, * * * ". These sections mentioned and quoted are, with others, all a part of Article 16, Chapter 102, R.S. Mo. 1939. The regulations named in this booklet setting forth the analysis of tolerances of certain "noxious weed seeds" may not include "the seeds of Canada thistle, Johnson grass, and field bindweed (*convulvulus arvensis*)"., because they are prohibited altogether from being sold under any provisions of said Article 16, or any regulations made under said Article.

This result would not be affected by the adoption of the Federal Seed Act as a part of said regulation number 11, or the tolerances specified therein.

The enactment of Article 16, Chapter 102, R.S. Mo. 1939, by the Legislature of this State was, and is, we think, a reasonable and proper exercise of its police powers by the State as an attribute of sovereignty of the State. The police powers incident to the exercise of independent sovereignty of the several States were never surrendered by the States to the Federal Government upon the adoption of the Federal Constitution. 12 C.J., page 910, states it this way:

"Under the American constitutional system, the police power, being an attribute of sovereignty inherent in the original states, and not delegated by the federal constitution to the United States, remains with the individual states. * * * ".

Footnote 38 under the above quoted text of Corpus Juris cites many cases from the United States Supreme Court, and the high Courts of many of the States, in harmony with the text quoted. So it will be seen that the Legislature was empowered to, and did, enact said Section 14271, as a part of said Article and Chapter as police regulations, to provide for the general welfare of the State. Keeping this in mind, we think the tolerances prescribed in the said Federal Seed Act would be subordinate to the terms of said Section 14271, which prohibits the inclusion under any conditions, or for any purpose, "the seeds of Canada thistle, Johnson grass, and field bindweed (*convulvulus arvensis*)" in any seeds offered for sale or sold under said Article and Chapter.

We believe you properly interpret the terms of

said Sections 14271 and 14272, and the intent of the Legislature therein expressed, when you establish and follow the practices in your Department set forth in paragraph 2 of your letter, which is as follows:

"We have held that the tolerances do not apply to the above mentioned Section and that Agricultural and Vegetable seed cannot be sold in the State of Missouri if they contain any Canada thistle, Johnson grass or Field Bindweed seed whatsoever."

We trust this will answer your questions.

CONCLUSION.

It is, therefore, the opinion of this Department that no agricultural or vegetable seeds as defined in Article 16, Chapter 102, R.S. Mo. 1939, may be offered for sale or sold in the State of Missouri "unless the said seeds are free from the seeds of Canada thistle, Johnson grass, and field bindweed (*convulvulus arvensis*)."

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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