

STATE DEPARTMENT OF AGRICULTURE: Commissioner may determine extent of analysis of agricultural seeds.

March 12, 1946



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Mr. J. W. Kuhler
State Seed Supervisor
Department of Agriculture
Jefferson City, Missouri

Dear Sir:

This office is in receipt of your request for our official opinion, as follows:

"A controversy has arisen in connection with the certificates of the seed testing laboratory of the State Department of Agriculture.

"The controversy turns on whether or not the seed laboratory should include in the certificate the variety name of the seed tested as stated by the grower, or whether the seed should be certified only as to the common name. To illustrate the question: If a person desiring to have seed tested sends in a sample of seed corn and designates it as U. S. Hybrid #13, the Department has never undertaken to certify as to the variety named, but only as to the fact that it is seed corn.

"This opinion is requested in order that we may know whether we do undertake to certify as to the named variety which is sent in, or should certify only in the group name to which the seed belongs."

With your request, you enclosed two forms of the certificate now in use by your laboratory, indicating that you now

certify as to the percentage of germination and the percentage of weed seeds or other foreign seeds. One certificate bears the statement that the laboratory does not verify the varieties of crop seeds.

Article 16, Chapter 102, R. S. Mo. 1939, commonly known as the "Uniform Seed" Law, authorizes an analysis of agricultural and vegetable seeds under the supervision of the Commissioner of Agriculture. Section 14268 of said article provides, in part, as follows:

"Every lot of agricultural seeds, as defined in section 14265 of this article, except as herein otherwise provided, when in bulk, packages, or other containers of one (1) pound or more, shall have affixed thereto, in a conspicuous place, on the exterior of the container of such agricultural seeds, a plainly written or printed tag or label in the English language, stating:

"(a) Commonly accepted name of such agricultural seeds.

"(b) The approximate percentage by weight of purity; meaning, the freedom of such agricultural seeds from inert matter and from other seeds distinguishable by their appearance.

* * * * *

"(c) The approximate percentage of germination of such agricultural seeds, (including hard seed) the month and year said seeds were tested.

"(f) The percentage of hard seeds. * * * "

Section 14269 makes a similar requirement for all seed mixtures.

Section 14270 provides certain exemptions from the provisions of the Article, but it is not material to a determination of the question involved.

Section 14275 makes a requirement similar to the provisions of Section 14268, supra, relative to the sale of vegetable seed.

An amendment to this law, relating to seed corn, is to be found in Laws of 1941, page 304, and is as follows:

"Section 14279a. No person shall sell, or offer to sell, or expose, or distribute within the State of Missouri any seed of field, sweet or pop-corn, labeled or represented to be hybrid corn, for seed purposes, unless such seed represents the first generation of a control cross involving one, two, three or four different inbred lines of corn or their combinations, and shall be restricted to seed of top crosses, single crosses, three-way crosses and double crosses. These in turn being defined as follows:

"(a) 'Top Cross Hybrid' means the first generation of the controlled cross between an open pollinated corn and an inbred.

"(b) 'Single Cross Hybrid' means the first generation of a controlled cross between two inbred lines.

"(c) 'Three-way Cross Hybrid' means the first generation of a controlled cross between a single cross and an inbred line.

"(d) 'Double Cross Hybrid' means the first generation of a controlled cross between two single crosses.

"The inbred lines shall mean a distinct strain developed through a period of not less than four successive generations of self-pollination. No person, firm or corporation shall sell, or offer to sell, or expose for sale or distribute in the State of Missouri, any hybrids without plainly marking on the label, or on the package, or in the bulk lot the words 'top cross hybrid', 'single cross hybrid', 'three-way cross hybrid' or 'double cross hybrid' as the case may be. Each and every package or bulk lot of hybrid seed corn must be labeled to show, in addition to the information required by the Uniform Seed Law, the name or number by which the hybrid is designated."

Section 14278, R. S. Mo. 1939, makes any violation of the Article a misdemeanor.

The foregoing statutes are clear and unambiguous, and it is considered that no further explanation of their provisions is necessary.

Several additional sections of the Article first above mentioned provide for the enforcement of the laws referred to. Section 14272, R. S. Mo. 1939, empowers the Commissioner to make reasonable rules and regulations to enforce article 16, and provides for the establishment of a laboratory, in the following language:

" * * * 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."

Section 14273, R. S. Mo. 1939, sets out the manner in which the Commissioner of Agriculture may obtain samples of agricultural seeds within the state, and is, in part, as follows:

"It shall be the duty of the said commissioner or his authorized agents to inspect, examine and make analysis of and test any agricultural seeds sold, offered or exposed for sale within this state for seeding purposes within this state, at such time and place, and to such extent as said commissioner may determine. * * * " (Emphasis ours.)

Mr. J. W. Kuhler - 5

The emphasized portion of the last quoted statute obviously vests discretion in the Commissioner of Agriculture as to the number and type of analyses to be made in the laboratory of the department. This position is confirmed by a portion of Section 14279, R. S. Mo. 1939, which is as follows:

"Any citizen of this state shall have the privilege of submitting to the commissioner of agriculture samples of agricultural seeds for test and analysis, subject to such rules and regulations as may be adopted by said commissioner: * * *."
(Emphasis ours.)

We have found no decisions in this state giving judicial interpretation of any of the foregoing sections.

CONCLUSION

Summarizing the foregoing statutory provisions, it is our opinion that the Commissioner of Agriculture may prescribe the form of certificate issued to citizens of this state, and he may omit from such certificate the variety name of the seed analyzed, in his discretion. The Commissioner may also determine the extent of the analysis or test to be made of any seed sold, exposed for sale or submitted to him by any citizen of Missouri.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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