

Opinion No. 51-5415

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BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Richard G. Marek Chief Inspector New Mexico Egg Inspection Department
State College, New Mexico

{*117} Since our last conference in the office regarding the New Mexico Egg Grading Act of 1951, which is H.B. 264, approved March 26, 1951, you have propounded several questions which have arisen since the passage of the act and which you requested should be interpreted by our office.

Your first question is, what persons are covered by the law, that is, are all persons covered by the law or only those persons who qualify under the law according to Section V of the act?

Section I of the Act says: 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. Then follows a description of eggs not fit to be used as human food.

Section I of the act covers any person, firm or corporation who 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 {*118} is broken in shell and then denatured so that it cannot be used for human food, as therein classified.

Section V, entitled "Exclusions and Exemptions," provides that the act shall not apply to:

(a) Producers selling directly to consumers not to exceed five cases (30 dozen per case) of eggs in any one week.

(b) Dealers buying from producers not to exceed 10 cases (30 dozen per case) of eggs in any one week or 520 cases per year (30 dozen per case) per year.

In my opinion, this act applies to all persons, firms or corporations who shall sell or have in his or their 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, as defined in Section I of the act, except those producers and dealers described in Section V of the act.

The only persons, firms or corporations excluded and exempted from the jurisdiction of this act are:

(a) Producers selling directly to consumer not to exceed 5 cases (30 dozen per case) of eggs in any week.

(b) Dealers buying from producers not exceed 10 cases (30 dozen per case) of eggs in any week or 520 cases per year (30 dozen per case) per year.

May I also add that this act is mandatory?

Your second question for interpretation is: Can the size of the label provided in Section III of the act be changed? You claim that you have had several complaints as to the size of the labels.

Section II reads as follows:

"It is unlawful

"(a) To offer for sale or sell to a consumer in this state any case of eggs, partial case of eggs, without securely pasting there-to a label which shall be purchased from the Egg Inspection Department of A. & M. College not smaller than seven inches square on which a space is provided for stamping the name and address of the packer of said eggs, and the grade and size to which such eggs belong. Different colored labels will be used with grade already printed on them. The size space will be left vacant and the packer will have to stamp the size in with letters not smaller than one-half inch. The colors used for different grades are as follows: Blue -- AA; Red -- A; White -- B; Yellow - C; and Green -- Unclassified.

"(b) To offer for sale or sell to a consumer in this state cartoned eggs, without sealing said carton with a label, two by three inches in size, which will be obtained from the Egg Inspection Department of the A. & M. College. The color of these labels will correspond with the colors used on the cases. The grades will be already printed on the labels and the size will be left blank for the packer to stamp in with letters not smaller than one-half inch in height. Blue labels will be used for AA Grade; Red -- A; White -- B; Yellow -- C; and Green for unclassified eggs.

"(c) To offer for sale cold storage or processed eggs without being marked as such.

"(d) To offer eggs for sale in any newspaper advertisement, circular, radio, or {*119} other form of advertising without plainly designating in advertisement the classification as to grade and size to which the eggs being offered for sale properly belong. The terms 'fresh eggs,' 'strictly fresh eggs,' 'hennery eggs,' 'new-laid eggs' or descriptions of similar import shall not be used in connection with the sale or offering for sale or advertising for sale of eggs in New Mexico that do not meet the minimum requirements for the New Mexico Grade A eggs or better.

"(e) To sell eggs by the case without an invoice stating both the correct size and correct grade description accompanying each case of eggs delivered to a retailer or consumer.

The case sticker number shall appear on the invoice. The invoice shall also include the name and address of both buyer and seller, date of sale, and shall otherwise conform to the regulations set forth in this law. This invoice should be kept by receiving dealer for a period of thirty days in case the inspector calls for it.

"(f) To offer for sale eggs in cartons that do not have the name of the packer stamped or printed on them.

"(g) To sell uncartoned eggs at retail."

Section III of the act specifically sets out the size of the label. It is mandatory. Changing the size would be a non-compliance with the law.

You also request interpretation of sub-paragraphs (g) and (e) of Section III of the act. You state that under sub-paragraph (g) uncartoned eggs cannot be sold. That is correct. You state that under sub-section (e) retailers can purchase loose eggs. That is not correct. This paragraph only permits sales of eggs in cases to a consumer or retailer.

As to your question whether sub-section (g) pertains to people who come under jurisdiction of the law, or all grocers and the people retailing eggs, this question has been answered in our answer to your first question.

As to your hypothetical question about sub-paragraphs (a) and (b) of Section V of the act in cases where a dealer purchases eggs from a producer not in excess of 10 cases a week, he is excluded and exempt under sub-paragraph (b) of Section V, but if the same dealer buys from a wholesaler in any amount, he is subject to the act. Paragraph (b) of Section V, specifically excludes and exempts dealers buying from producers not to exceed 10 cases (30 dozen per case of eggs) in any week or 520 cases per year (30 dozen per case). Paragraph (a) of Section V excludes producers selling directly to consumers, and has no application to dealers. Paragraph (b) of Section V does not exempt dealers who exceed the purchase of 10 cases of eggs per week. Dealers who purchase in excess of 10 cases of eggs per week from any source are not exempt from the law. Dealers purchasing from wholesalers who are not producers, in any amount, are subject to the law.

You state that in Section VIII of the act there is contradiction to Section V (Exclusions and Exemptions) as to the meaning of the word "dealer" or a person who purchases 10 cases of eggs. The controlling sub-section is sub-section (a) of Section VIII of the act, which specifically says:

"A 'small dealer's license' shall be required of any person, firm, or corporation who buys, sells, or traffics in more than 5 cases (30 dozen per case) and less than 400 cases (thirty dozen per case) of eggs in any one week."

{*120} Regarding your question about the over-lapping in sub-paragraphs (a) and (b) of Section VIII of the act, I agree with you that there is a distinct overlapping, as under (a)

"small dealer" is defined as a person who sells 5 cases to 400 cases of eggs in any one week and the "medium dealer" is a person who, under sub-section (b) sells from 200 to 400 cases of eggs per week.

Possibly a mistake was made by the Legislature or by the clerk who typed the final draft of the bill, but any person, firm or corporation who sells 200 cases or over is a medium dealer and one who sells more than 5 cases but less than 200 cases of eggs per week is a small dealer.

Your next to the last question is concerning Section IX respecting penalties for violations of law. You ask who is liable, the grocer or the dealer. This is covered by Section I of the act, which 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" etc.

A grocer is a dealer if he sells eggs at retail unless he is exempted under paragraph (b) of Section V.

As to the last question about credentials or certificates to prove your credentials the Board of Regents of the State College should furnish you with same, as they are charged with the enforcement of this act under Section VI of the act.

I trust that this fully answers your inquiries.