

poses directly connected with the administration of vocational rehabilitation under the Plan.”

Thereafter, in April, 1944, a new state plan was executed pursuant to said adoption of Public Law 113, and on December 19, 1945, an amendment to said state plan was made setting out in great detail the manner in which such state board would guard and keep confidential the privileged communications coming to it in the administration of said program, which amendment was in compliance with the regulations and directives of the Federal agency as necessary to secure Federal aid in carrying on said program. While these amendments are therein also referred to as rules and regulations, they are in fact amendments to the state plan.

Since Section 28-4920, *et seq.* Burns' 1933, *supra*, is an enabling statute by this state for participation in such Federal program, and since the Legislature has specifically authorized the state agency to observe and comply with all the requirements of such Federal act, I am of the opinion the amendment to the state plan, heretofore referred to, directing the safeguarding of such confidential communications as therein set out, is authorized by said Indiana statute.

OFFICIAL OPINION NO. 71

December 2, 1947.

Hon. F. W. Quackenbush,
State Chemist & Seed Commissioner,
Agricultural Experiment Station,
Purdue University,
Lafayette, Indiana.

Dear Mr. Quackenbush:

Your letter of November 14, 1947, has been received in which you request an official opinion as to whether a seed company in another state who sells seeds in the State of Indiana, by mail or otherwise, can be required to comply with the Indiana Seed Law, and with Rule No. 1 promulgated by the State Seed Commissioner under this act. If so, you desire

to know if compliance could be enforced under the provisions of Section 15 of the original act, as amended.

The question is controlled by the provisions of Section 15-801 et seq. Burns' 1933, being Chapter 28, Acts 1921, as amended.

Section 1 of the act, as amended by Chapter 210, Acts 1941, same being Section 15-801 Burns' 1945 Supplement, defines the term "agricultural seeds" as used in said act with a listing of the same; Section 2 of said act, as amended by Chapter 210, Acts 1941, same being Section 15-802 Burns' 1945 Supplement defines and lists noxious weed seeds, and provides the State Seed Commissioner may add to or subtract from either of the foregoing lists.

Section 3 of said act, as amended by Chapter 210, Acts 1941, same being Section 15-803 Burns' 1945 Supplement, provides in part as follows:

"Except as otherwise provided in this act (§§ 15-801—15-813a), every lot, package, parcel, bag or bulk lot of agricultural seed containing one (1) pound or more which is sold, offered, or exposed for sale for sowing or seeding purposes within this state, shall have affixed thereon or attached thereto, in a conspicuous place on the outside of each container, or be delivered with bulk sales, a plainly written or printed tag or label, in the English language stating:
* * *"

thereafter, follows the information necessary to be contained on such printed tag or label.

The seeds referred to in your question are not within that class of seeds exempted from the provision of said act under Section 5 of said act, same being Section 15-805 Burns' 1945 Supplement.

Section 9 of said act, as amended by Section 6, Chapter 210, Acts 1941, same being Section 15-809 Burns' Supplement, provides as follows:

"It shall be unlawful for any person, firm or corporation to sell, offer or expose for sale within this state any agricultural seeds or mixture of agricultural seeds, as defined in this act (§§ 15-801—15-813a) for seeding purposes within this state which

contain any 'primary noxious weed seeds' and/or which contain more than one-half of one per centum (.5%) by weight of 'secondary noxious weed seeds' and/or which contain more than three per centum (3%) by weight of all weed seeds as determined by the official methods of seed testing or without complying with the requirements of this act, or to falsely mark or label any agricultural seeds, or to alter the official tag or label, or to use the name and title of the seed commissioner, or a tag or label not furnished by the seed commissioner, or to use the tag or label of the seed commissioner the second time, or to interfere in any way with the state seed commissioner, his inspectors or assistants in the discharge of the duties herein named."

Section 15 of said original act, as amended by Section 7, Chapter 210, Acts 1941, same being Section 15-813a Burns' 1945 Supplement, provides as follows:

"Any lot of agricultural seed not in compliance with the provisions of this act (§§ 15-801—15-813a) shall be subject to seizure on complaint of the state seed commissioner to a court of competent jurisdiction in the area in which the seed is located. In the event that the court finds the seed to be in such violation of the act and orders the condemnation of said seed, it shall be denatured, processed, destroyed, relabeled or otherwise disposed of in compliance with the laws of this state: Provided, That in no instance shall such disposition of said seed be ordered by the court without first having given the claimant an opportunity to apply to the court for the release of said seed or promise to process or relabel to bring it into compliance with the act."

Rule No. 1 of the Rules and Regulations of the State Seed Commissioner duly promulgated pursuant to Chapter 120, Acts 1945, provides as follows:

"1. LABELING. All agricultural seed in condition for seeding purposes shipped or delivered in the State of Indiana must have attached to each bag or package

of one pound or more a properly filled out State Seed Commissioner label. When seed is offered or exposed for sale or sold for seeding purposes, labels of weight denominations specified in Section 12 of the Act and in proportion to the net weight of the seed shall be completely and accurately filled out and attached to each bag or package of one pound or more. Sufficient labels to cover the net weight of the seed must be filled out and delivered with bulk sales."

The validity of such an Indiana statute was before the United States Supreme Court in the case of *Savage v. Jones, State Chemist, State of Indiana* (1912), 225 U. S. 501. That case involved the validity of a shipment into Indiana for sale of food for domestic animals. That statute required the labeling or tagging of any such produce sold in Indiana showing and guaranteeing the analysis of its contents together with other requisite information. In holding said legislation was not violative of the federal constitution, the court on page 524-525 of the opinion said:

"The evident purpose of the statute is to prevent fraud and imposition in the sale of food for domestic animals, a matter of great importance to the people of the State. Its requirements were directed to that end, and they were not unreasonable. It was not aimed at interstate commerce, but without discrimination sought to promote fair dealing in the described articles of food. The practice of selling feeding stuffs under general descriptions gave opportunity for abuses which the legislature of Indiana determined to correct, and to safeguard against deception it required a disclosure of the ingredients contained in the composition. The bill complains of the injury to manufacturers if they are forced to reveal their secret formulas and processes. We need not here express an opinion upon this question, in the breadth suggested, as the statute does not compel a disclosure of formulas or manner of combination. It does demand a statement of the ingredients, and also of the minimum percentage of crude fat and crude protein and of the maximum percentage of crude fiber, a

requirement of obvious propriety in connection with substances purveyed as feeding stuffs.

“The State cannot, under cover of exerting its police powers, undertake what amounts essentially to a regulation of interstate commerce, or impose a direct burden upon that commerce. *Railroad Co. v. Husen*, 95 U. S. 465, 475; *Walling v. Michigan*, 116 U. S. 446; *Bowman v. Chicago & C. Ry. Co.*, 125 U. S. 465; *Leisy v. Hardin*, 135 U. S. 100; *Minnesota v. Barber*, 136 U. S. 313; *Brimmer v. Rebman*, 138 U. S. 78; *Scott v. Donald*, 165 U. S. 38; *Schollenberger v. Pennsylvania*, 171 U. S. 1, 13; *Houston & Texas Central R. R. Co. v. Mayes*, 201 U. S. 321; *Atlantic Coast Line v. Wharton*, 207 U. S. 328; *Adams Express Co. v. Kentucky*, 214 U. S. 218. But when the local police regulation has real relation to the suitable protection of the people of the State, and is reasonable in its requirements, it is not invalid because it may incidentally affect interstate commerce, provided it does not conflict with legislation enacted by Congress pursuant to its constitutional authority. *Plumley v. Massachusetts*, 155 U. S. 461; *Hennington v. Georgia*, 163 U. S. 299, 317; *N. Y., N. H. & H. Ry. Co. v. New York*, 165 U. S. 628; *Chicago M. & St. P. Ry. Co. v. Solan*, 169 U. S. 133; *Missouri, Kansas & Texas Ry. Co. v. Haber*, 169 U. S. 613; *Patapsco Guano Co. v. North Carolina*, 171 U. S. 345; *Reid v. Colorado*, 187 U. S. 137; *Pennsylvania R. R. Co. v. Hughes*, 191 U. S. 477; *Crossman v. Lurman*, 192 U. S. 189; *McLean v. Denver & Rio Grande R. R. Co.*, 203 U. S. 38, 50; *Asbell v. Kansas*, 209 U. S. 251, 254-256; *Chicago, R. I. & P. Ry. Co. v. Arkansas*, 219 U. S. 453.”

On page 526 of the opinion the court at length reviews the holding of that court in the case of *Patapsco Guano Co. v. North Carolina* (1898), 171 U. S. 345, where the court upheld the validity of a statute of the State of North Carolina relating to the labeling and stamping of fertilizing material shipped into said state for sale therein, which statute made a small charge for such labels for the purposes of defraying expenses connected with such inspection by the state, a

situation which is identical with the requirements of the Indiana statute here in question.

It has been held by the Supreme Court of United States that the mere fact state action may have repercussions beyond state lines is of no judicial significance so long as the action is not within that domain which the constitution forbids.

Osborn v. Ozlin (1940), 310 U. S. 53, 62.

Since this state has an interest in the consequences of the acts of selling such seeds within this state, it has the power to enforce such regulations and not depend upon the standards of some other state, even though interstate commerce might be indirectly affected.

Pacific Employers Ind. Co. v. Industrial Accident Commission (1939), 306 U. S. 493, 504-505.

From the foregoing I am of the opinion that the aforesaid Indiana statutes are valid and enforceable against persons selling the same in the State of Indiana, by mail or otherwise.

Since under Section 15-813a Burns' 1945 Supplement, *supra*, provision is made for the seizure of any such seeds sold in this state in violation of said statute, by the State Seed Commissioner filing a complaint in a court of competent jurisdiction in the area in which the seed is located; and since provision is therein made giving the claimant an opportunity to apply to the court for a release of said seeds on his compliance with the provisions of said act; that due process is afforded such claimant and that compliance with said act could be legally enforced by seizure of such seeds under the provisions of such said section of said statute.