

OFFICIAL OPINION NO. 72

December 3, 1947.

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

Dear Mr. Quackenbush:

Your letter of November 14, 1947, received requesting an official opinion on the following question:

“Under the Indiana Fertilizer Law can a manufacturer legally dilute a fertilizer of a certain analysis (e.g. 3-9-18) by adding to each 1800 lbs., 200 lbs. of a chemical which contains no nitrogen, phosphorus or potash but which contains other plant food elements, place the resulting mixture in bags which bear the manufacturer's guarantee of the original analysis (e.g. 3-9-18) either by printing on the bags or by tags or labels attached to the bags, sell and deliver the product so labelled to a farmer if the manufacturer's invoice to the farmer shows what was actually sold (e.g. 1800 lbs. 3-9-18 fertilizer \$—, 200 lbs. sulfate of manganese \$—.”

You state certain manufacturers who sell their products in this state have been attempting for several years to get your consent to this practice, and they argue that the control agencies in some other states have sanctioned the practice; however, you have rigidly opposed it on the ground that any grade of fertilizer, when diluted, irrespective of the nature or cost of the diluant, becomes a different grade of lower analysis and if labelled as the original grade would be misbranded. For example, 1800 lbs. of a 3-9-18 fertilizer plus 200 lbs. of diluant will give a ton of fertilizer which will analyze 2.7-8.1-16.2. A buyer would be misled if the package containing this material were labelled 3-9-18.

Section 15-1001 Burns' 1933, same being Section 1, Chapter 184, Acts 1901, provides as follows:

“Before any commercial fertilizer is sold, or offered for sale, in the state of Indiana, the manufacturer, dealer, importer, agent or party who causes it to be sold or offered for sale, by sample or otherwise, within the state of Indiana, shall file with the state chemist of Indiana a statement that he desires to offer for sale in Indiana material for manurial purposes, and also a certificate, for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, the name under which the fertilizer will be sold, the names of the towns in Indiana in which it will be offered for sale, and the minimum percentage of nitrogen, of potassium oxide (K^2O) soluble in water, or phosphoric acid (P^2O^5), and, in the case of acidulated goods, the minimum percentage of water, soluble and reverted phosphoric acid, and of insoluble phosphoric acid which the manufacturer or party offering the fertilizer for sale guarantees the fertilizer to contain.”

Section 15-1002 Burns' 1933, same being Section 2, Chapter 184, Acts 1901, reads in part as follows:

“It shall be the duty of the state chemist to register the certificate provided for in section one of this act and to print the facts set forth in the certificate in the form of a label. Such label shall be plainly printed in the English language and shall set forth the name of the manufacturer, the location of the principal office of the manufacturer, the name of the fertilizer, and the minimum percentage of nitrogen, of potassium oxide, (K^2O) soluble in water, or phosphoric acid (P^2O^5), or in the case of acidulated goods, of soluble and reverted phosphoric acid and of insoluble phosphoric acid which the manufacturer guarantees the fertilizer to contain. The state chemist shall furnish such labels to manufacturers or agents desiring to see, or to offer or expose to sale, the fertilizer so registered and in such numbers as such manufacturers or agents may desire: * * *.”

Section 15-1003 Burns' 1933, same being Section 3, Chapter 184, Acts 1901, is in part as follows:

"Any person, company, corporation or agent that shall manufacture, offer for sale, sell or expose for sale, by sample or otherwise, or have in his possession for his own use, or for the use of another, any commercial fertilizer, shall affix or cause to be affixed to every package or sample of such fertilizer, in a conspicuous place on the outside thereof, the label of the state chemist provided for in section two of this act.
* * *"

Section 15-1004 Burns' 1933, same being Section 4, Chapter 184, Acts 1901, provides:

"Any person, company, corporation or agent that shall offer for sale, sell or expose for sale by sample or otherwise, or have in his possession for his own use or for the use of another, any package or sample or any quantity of any commercial fertilizer which does not have affixed to it the label of the state chemist, or which shall be found by an analysis made by or under the direction of the state chemist to contain a smaller percentage of any one of the ingredients mentioned in section two of this act than the label of the state chemist shows it is guaranteed to contain, or which shall be labeled with a false or inaccurate guarantee; or any person, company, corporation or agent that shall use the name or title of the state chemist on a label not furnished by the state chemist shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in the sum of fifty dollars (\$50.00) for the first offense and in the sum of one hundred dollars (\$100.00) for each subsequent offense. In all litigation arising from the purchase or sale of any commercial fertilizer in which the composition of the same may be involved, a certified copy of the official analysis signed by the state chemist shall be accepted as conclusive proof of the composition of such fertilizer: Provided, That nothing in this act shall be so construed as to prevent a farmer mixing fertilizer

materials, sold under provisions of this act, for his own use, or to prevent manufacturers who have complied with the provisions of sections one, two and three of this act, having in stock raw material for the manufacture of fertilizers, or to prevent the state chemist, or the United States agricultural experiment station for Indiana, or any person or persons deputized by said state chemist, making experiments with agricultural chemicals for the advancement of the science of agriculture.”

It is reasonable to assume that such legislation is for the purpose of preventing false labeling as to the minimum percentage of those ingredients required to be shown by the certification and labeling under the provisions of the statute.

Such regulatory statutes are constitutional and within the police power of the State.

Patapsco Guano Co. v. North Carolina (1898), 171 U. S. 345, 350 to 361. (Quoted and approved in Savage v. Jones (1912), 225 U. S. 501, 526, 528.

The above quoted sections of the statute clearly require any person offering for sale in Indiana commercial fertilizer to first submit to the State Chemist of Indiana an application for a certificate for registration together with a statement of the minimum percentages of the certain ingredients prescribed in Section 1 of said statute, *supra*, which the manufacturer or party offering the fertilizer for sale guarantees the fertilizer to contain. Thereafter, the State Chemist registers the certificate above provided for setting out the ingredients required to be so certified by said manufacturer or seller, and tags or labels are thereupon furnished by the State Chemist to such manufacturer or seller who is required to so label each sale or delivery of 200 lbs. or fraction thereon. A penalty is provided for the use of such label on such fertilizer if it contains a smaller percentage of any of the ingredients mentioned and required by said statute.

The above statute is clear and unambiguous and is not susceptible of the construction sought by such manufacturers or sellers.

It has been held that a court has no authority to read in anything into a statute which is plain and unambiguous, but must give full effect thereto.

Cain v. Staley Mfg. Co. (1933), 97 Ind. App. 235, 186 N. E. 265.

When a statute is free from any ambiguity, there is no room for judicial construction by the court.

State v. Squibb (1908), 170 Ind. 488, 84 N. E. 969;

Kunkalman v. Gibson (1908), 171 Ind. 503, 84 N. E. 985, 86 N. E. 850;

State v. Mutual Life Ins Co. (1910), 175 Ind. 59, 93 N. E. 213, 42 L. R. A. (N. S.) 256;

Kirkpatrick v. Van Cleave (1909), 44 Ind. App. 629, 89 N. E. 913;

Indiana Union Trac. Co. v. Gough (1913), 54 Ind. App. 438, 102 N. E. 453;

Cain v. Staley Mfg. Co. (1933), 97 Ind. App. 235, 186 N. E. 265;

Williams v. Michigan City (1934), 100 Ind. App. 136, 192 N. E. 103.

It is clear that when a certification has been properly made and labels issued by the State Chemist for a certain commercial fertilizer under the provisions of said act, any change in such mixture by the addition of foreign ingredients, not containing any of the ingredients so certified to by the manufacturer or seller, would, as stated in your letter, weaken the percentage of ingredients required to be certified to as a minimum under the foregoing statute. It would no longer be the mixture for which the certificate was made and the label issued.

I am therefore of the opinion any action of such manufacturer or seller in adding such foreign substances in its commercial fertilizer offered for sale and making such sale in the manner set forth in your question, would be illegal and a clear violation of the provisions of said statute.