OFFICIAL OPINION NO. 88

September 24, 1946.

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

Dear Sir:

Your letter of September 4, 1946, received as follows:

> "I would appreciate your official opinion as to the venue in the following case of a violation of the Feeding Stuffs Control Law.
>
> "A feed manufacturer has a plant in County A and a branch plant in County B, which is managed by his agent. A feed dealer has a warehouse in County C and a branch warehouse in County D. The dealer's agent in County D telephoned an order to the dealer in County C, who in turn telephoned the manufacturer in County A, placing the order. The manufacturer delivered the feed in his truck to the dealer's branch warehouse in County D and mailed the invoice made out in the name of his branch plant in County B. The invoice was forwarded to the dealer's headquarters in County C, from which a check in payment was mailed to the manufacturer in County A. The dealer's branch in County D offered the feed for resale. Our inspector sampled the feed, and we found it to be seriously misbranded and adulterated.
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> "We wish to file a case on the manufacturer who was originally responsible for the violation. In which county should this case be filed?"

Section 15-809 Burns' 1945 Supplement, same being Section 6, Chapter 210, Acts 1941, 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 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 15-815 Burns' 1945 Supplement, same being Section 1, Chapter 248, Acts 1935, reads as follows:

"Every person, firm, association or corporation who shall issue, use or circulate, any certificate, advertisement, tag, seal, poster, letter head, marking, circular, written or printed representation or description of or pertaining to seeds or plant parts intended for propagation or sale, or sold or offered for sale wherein the words 'Indiana State Certified,' 'State Certified,' 'Indiana Certified,' 'Certified,' or similar words or phrases are used or employed, or wherein are used or employed signs, symbols, maps, diagrams, pictures, words or phrases expressly or impliedly stating or representing that such seeds or plant parts comply with or conform to the standards or requirements for certification recommended or approved by the Purdue University agricultural experiment station, shall be subject to the provisions of this act. Every issuance, use or circulation of any certificate and/or any other instrument, as in this section above described, shall be deemed to be 'certification' as that term is employed in this act."

Section 15-822 Burns' 1945 Supplement, same being Section 8, Chapter 248, Acts 1935, provides as follows:

"It shall be unlawful for any person, firm, association, or corporation to issue, make, use or circulate any

> certification, as defined in this act, without the authority and approval of the Purdue University agricultural experiment station, or its duly authorized agency, as herein provided. Every person, firm, association, or corporation who shall violate any of the provisions of this act pertaining to certification shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than twenty-five dollars ($25.00) nor exceeding two hundred fifty dollars ($250) for each offense."

It is therefore necessary to determine under the above state of facts where said seed was sold, offered or exposed for sale.

There seems to be no question but what the seeds were offered for sale and probably mislabelled in County A. This being true, it is necessary to determine if that is the only county which would have jurisdiction—in other words, where was the sale made?

Rule five of Section 58-203 Burns' 1943 Replacement, same being Section 19, Chapter 192, Acts 1929, commonly known as the Uniform Sales Act, provides as follows:

> "If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon."

In Williston on Sales, Second Edition, Section 280, page 591, the author in construing Rule five of the Uniform Sales Act, declares the rule to be:

> "* * * If the seller's obligation to deliver is simply that imposed by law in accordance with this rule, the fact that the seller still is under an obligation to deliver the goods, that is to allow the buyer to make them, will not prevent the application of the presumption that the property passes as soon as all the terms of the bargain are agreed upon. Where, however, the seller assumes a wider obligation in regard to delivery

—to transport the goods—the case is different, and rule 5 of section 19 of the Sales Act is applicable. This rule states the doctrine of the common law. It is based upon a theory analogous to that supporting rule 2 of section 19—something further remains to be done by the seller, not indeed to put the goods in a deliverable state, but in order to carry out the bargain. And the duty of the seller to transport the goods to the place of delivery is not, as is ordinarily the case with the duty of the seller to deliver, conditional upon the concurrent payment of the price, or dependent upon the duty of the buyer to come for the goods. Where the seller contracts to deliver the goods at the buyer's residence or at any other particular place, it is the seller's duty to go forward unconditionally with the transportation of the goods to that place. Until he has done that, presumably the property is not intended to pass."

In 46 Am. Jur., Sales, Section 415, page 587, is found the following statement:

"* * * Where the buyer transmits an order to the seller and, without the intervention of a carrier, the seller fills such order by a delivery personally or through his agent to the buyer at the latter's place of residence, the view is generally taken that the buyer's place of residence is to be deemed the place of sale. * * *"

In the case of Merrill v. The State of Indiana (1910), 175 Ind. 139, which was decided prior to the adoption of the Uniform Sales Act in this state, the court in determining a sale of intoxicating liquors sent from one county to another, to have been made when delivered to the consignee, said on page 145 of the opinion:

"The place of sale is the place where the sale is completed by delivery. * * *"

I am therefore of the opinion the sale was made in County D.

Summarizing the foregoing I am of the opinion that the venue of the prosecution for the completed sale which would

be the selling of the seeds was made in D County and that a prosecution for using and circuating said false labels and for unlawfully selling such adulterated seeds could be had in D County; that the venue of the prosecution for offering or exposing for sale as well as for falsely marking or labelling such seeds (if actually labelled in A County) would be in A County.

OFFICIAL OPINION NO. 89

September 27, 1946.

Mr. Edwin Steers, Member,
State Election Board,
108 East Washington Building,
Indianapolis, Indiana.

Dear Mr. Steers:

I have your letter of September 25, 1946 in which you request my official opinion upon the following facts:

> In the last primary election a person was nominated for Judge of the Circuit Court of Delaware County. At the time of his nomination such person was a colonel in the United States Army stationed in Washington, D. C. He entered the service on September 1, 1941 as a major in the United States Army. For a long time prior to his entry into the armed forces and ever since he has voted in the 26th precinct in Muncie, Indiana, and during all of that time has been a legally qualified registered voter of said precinct. At the time he went into the service he owned property in which he lived in the 26th precinct in Muncie, Indiana, but while in the service he sold the property and due to the housing shortage around Washington, D. C., where he was stationed, he purchased a dwelling house in Falls Church, Virginia. He has never claimed residence in Virginia, but has at all times claimed Muncie, Indiana, as his home and legal residence.
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> Based upon the foregoing facts you ask whether or not he can be considered a legal resident of Delaware