Mr. Monroe McCown,
Secretary-Treasurer,
Indiana Horticultural Society,
Lafayette, Indiana.

Dear Sir:

This is in answer to your request of April 16th asking an interpretation of certain provisions of Senate Bill 217, which is chapter 216 of the 1941 Acts. The Act which will go in effect May 10, 1941, provides that apples, peaches, and strawberries sold, offered or exposed for sale shall be plainly marked with a sign bearing the name of the variety and the size and grade. However, strawberries marked with a recognized standard grade need not be marked with a sign indicating the minimum size.

The Commissioner of Agriculture is charged with the enforcement of the Act and is given the following power under Section 3 of the Act.

“(a) To enter and inspect personally or through any authorized representative any place within the State of Indiana where any apples, peaches, or strawberries are sold, offered or exposed for sale, and to inspect such places and all apples, peaches, and strawberries and containers therefor found in any such place;

“(b) To stop any wagon, truck, or other vehicle upon any public street or highway of the state for the purpose of inspecting any apples, peaches, or strawberries that may be so transported;

“(c) To make, publish and enforce such uniform rules and regulations as may be necessary for carrying out the provisions of this act;”

Your first inquiry is:

“Under Section 3, sub-section (a), Can packed and marked or unmarked containers of fruit, that is, apples, peaches, or strawberries, which are stored in
commercial storages be considered as being exposed for sale?"

This question can not be answered either yes or no. The fact that the fruit is packed for eventual sale, either in closed containers, or in crates, or other open containers, and placed in privately owned or commercial storages, does not of itself justify the inference that the fruit is offered for sale. There must be additional evidence to indicate that the fruit is being offered or exposed for sale to justify the commissioner in proceeding on that basis.

Second, you ask:

"Under Section 3, sub-section (b), Can apples, peaches, or strawberries which are being transported, either under ownership of original grower or a purchaser, be considered to be exposed for sale?"

This can only be answered like your question number 1 just above.

Your next question is:

"If fruit is stored in bulk, usually bins, or transported in bulk (poured loosely into vehicle), will one sign on bin or truck suffice?"

One sign will suffice, if the fruit is in a bin or vehicle so that it is definitely set apart and identified as the fruit to which the sign applies.

You say also:

"Under Section 3, sub-section (c), Can the Commissioner of Agriculture, under the authority hereby given, require the marking of the name of the packer on closed containers of fruit?"

It is my opinion that the commissioner may make this requirement, if he finds that it is reasonable and necessary to enable him to carry out the provisions of the act.

Your fifth inquiry is:

"Can the Commissioner of Agriculture issue regulations to the effect that transportation or storage in
wholesale quantity by the original owner and/or by purchaser is evidence of exposure for sale?"

In my opinion this must be answered in the negative. There should be some further evidence of an intention to sell besides the mere transportation or storage of fruit and I do not believe such a regulation would be justified.

You also refer to chapter 65 of the 1935 Acts—Burns' Ind. Stat. Anno. 1933 Supp. 69-104, an act concerning the prevention of fraud and deception in the branding of fresh fruits and vegetables grown, packed, or offered for sale in packages within Indiana. Insofar as the 1935 Act is in conflict with chapter 216 of the 1941 statute, it must be taken as repealed or modified so as to make way for the later act. The 1935 act is not limited to apples, peaches, and strawberries but deals with all fresh fruit and vegetables, the state board of health, its food and drug commission, commissioner of weights and measures, food inspectors, sealors of weights and measures and agents are especially charged with its enforcement. The Commissioner of Agriculture, or his agent, has no authority in its enforcement. However, there is no reason why those who are responsible for its actual enforcement may not call on any prosecuting attorney and use the evidence or information found by the commissioner of agriculture in a prosecution for violation of the 1935 law.

The language of this opinion must not be taken to mean that the commissioner of agriculture can not enter and inspect any storage place or stop and inspect any vehicle carrying fruit for the purpose of ascertaining whether or not apples, peaches or strawberries are being sold, offered or exposed for sale contrary to the provisions of the 1941 Act.

In my opinion he is authorized to make such inspection and if he finds evidence of sale, offer or exposure for sale, contrary to the law, he may then institute a prosecution for a violation of the 1941 Act.