

handling charges of the tags returned to the State Chemist."

As authority for the issuance of such a regulation, you call attention to section 9 of the Act which empowers the State Chemist to prescribe and enforce such rules and regulations relating to concentrated commercial feeding stuff as he may deem necessary to carry into effect the full intent and meaning of the Act.

The authority to make rules and regulations as above provided, however, goes only to the making of such rules and regulations as are consistent with the Act. In other words, you would have no authority by virtue of the provision of section 9 to make a rule upon a subject covered by the Act which was inconsistent with the provision of the Act itself.

This department in an opinion issued by a predecessor on June 2, 1926, held that there was no authority in the law which authorized the State Chemist to take back labels or stamps sold by him or which authorized him to trade new stamps for old and unused ones. The 1933 amendment of the Act referred to does not operate to change the Act as bearing upon the above question and if the construction given on June 2, 1926, is correct as of that date, it would be correct now. I have examined the Act carefully and from such examination I see no reason for changing the previous opinion above referred to. (See: Opinions of Attorney General, 1925-1926, page 770.)

It follows that if the opinion is a correct interpretation of the Act, you would not be authorized to change it by a rule or regulation. In my opinion you have no authority to issue the rule or regulation above referred to.

FARM, INDIANA STATE: Prison and convict made goods in interstate commerce. Responsibility for transportation.

Mr. Ralph Howard,
Superintendent, Indiana State Farm,
R. R. No. 2,
Greencastle, Indiana.

February 1, 1937.

Dear Sir:

This is in response to the request of your board of trustees for an opinion as to the liability for institution products sold to be shipped out of the State of Indiana. You say:

“We have two or three jobbers who come to the farm and purchase hickory furniture and basket ware. The packages and tags are stamped “Made at the Indiana State Farm, Greencastle, Indiana.” This I believe conforms to the law. These goods being bought and paid for, does our liability or responsibility end, or if a suit were entered against the jobbers making these purchases, would we be involved in any way?”

“Answers to these questions will, I believe, enable us to determine whether we should sell any more products that we know in reason will be shipped out of the State.

An Act of Congress divests prison made goods of their interstate character. That is, goods, wares and merchandise produced by convicts or prisoners and shipped into another state are subject to the laws of that state and are not exempt by reason of the “original package” rule.

(Laws 1929. U. S. C. A. Title 49, Sec. 60.)

The State of Indiana in 1933 enacted a law in conformity with such Federal Act.

(Acts 1933, page 1228.)

In 1935 Congress enacted further legislation referred to as the Ashurst-Sumners Act making it unlawful for any person knowingly to transport or cause to be transported, or to aid or assist in obtaining transportation, of prison or convict goods into any state or territory where such goods are intended to be possessed or sold or used in violation of the State law. There are certain exceptions in the law which need not now be considered at this time. Section 2 of this 1935 statute is as follows:

“All packages containing any goods, wares, and merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, when shipped or transported in interstate or foreign commerce shall be plainly and clearly marked, so that the name and address of the shipper, the name and address of the consignee, the

nature of the contents, and the name and location of the penal or reformatory institution where produced wholly or in part may be readily ascertained on an inspection of the outside of such package. (July 24, 1935, c. 412, Sec. 2, 49 Stat. 494.)”

Other sections provide a penalty for a violation of the Act.

(U. S. C. A. Title 49, Secs. 62, 63 and 64.)

The statute has recently been held valid by the Supreme Court of the United States in the case of Kentucky Whip, etc., Co. v. Illinois Central R. R. Co., Jan. 4, 1937. That decision says:

“The Act makes it unlawful knowingly to transport in interstate or foreign commerce goods made by convict labor into any state where the goods are intended to be received, possessed, sold, or used in violation of its laws. Goods made by convicts on parole or probation, or made in federal penal and correctional institutions for use by the Federal Government, are excepted. Packages containing convict-made goods must be plainly labeled so as to show the names and addresses of shipper and consignee, the nature of the contents, and the name and location of the penal or reformatory institution where produced. Violation is punished by fine and forfeiture.”

My understanding of sales by the Indiana State Farm is that all sales are completed and deliveries of goods are made at the institution, and that you assume no responsibility, and take no part in the transportation of the goods after they are marked and sold.

It is my opinion, therefore, that you are not liable for goods which you sell and which are shipped out of the state by purchaser. However, I believe in a case where you have reasonable grounds to believe that goods sold by you are to be transported into another state and sold or used contrary to the law of that state, you would be justified in refusing to sell the goods for that purpose. That is, your institution should not be in the attitude of aiding in an illegal transportation under the Ashhurst-Sumners Act.