

**Egg Marketing—Hay Grading—Officer Chargeable With Duty of Enforcing the Laws Relating Thereto—Statutory Construction.**

The Department of Agriculture, Labor and Industry is vested with the supervisory control over the poultry industry by Chapter 184 of the Laws of the 17th Legislative Assembly.

The health officers are given authority under this law to enforce the Egg Marketing Law.

The Department of Agriculture, Labor and Industry has the general supervision and charge of the grading of hay in Montana.

Private citizens have the right, and it is their duty, to swear to a complaint for any violation of the law, regardless of whether someone is specially chargeable with the duty of enforcing the law in question.

The duty of prosecuting for the violation of all laws rests upon the respective county attorneys.

Chester C. Davis, Esq.,  
Commissioner of Agriculture,  
Helena, Montana.

My dear Mr. Davis:

You have inquired as to which officials are charged with the enforcement of the "Egg Marketing" and "Hay Grading" laws enacted at the recent legislative session, and whether a private citizen may swear to a complaint for violations of these Acts, and what officer is charged with the prosecution of cases arising under these Acts.

Section 11 of Chapter 216 of the Laws of the 17th Legislative Assembly provides, in part, as follows:

"The Division of Farming and Dairying shall investigate and bring to the attention of the public the value and importance of poultry raising in Montana, and shall publish for free distribution reports and bulletins pertaining to the advancement of poultry husbandry. Said Division shall also supervise and promote local poultry associations, and shall supervise the holding of an annual State Poultry Exhibition."

Section 6 of Chapter 184 of the Laws of the 17th Legislative Assembly, regulating the marketing of eggs, provides as follows:

"All fines collected for violations of this Act shall be paid to the County Treasurer of the proper county, who shall remit the same to the State Treasurer of the State of Montana, and said money shall be placed to the credit of the General Fund, the same to become immediately available, and to be paid out upon the presentment of vouchers issued by the Secretary of the State Board of Health; provided also, the county health officer of counties and city health officers of cities, shall enforce this Act."

It was apparently the intention of the Legislature to place the scientific, educational, and supervisory end of the poultry industry upon the Department of Agriculture, Labor and Industry, but to charge the health officers especially with the enforcement of the Egg Marketing Law.

The provision referring especially to health officers does not, however, relieve other officials charged with the enforcement of the law generally of their obligation to do so, or deprive any person of the right and obligation to see the law enforced if knowledge of its violation comes to his attention.

Section 3-A, Chapter 140 of the Session Laws of 1921, Hay Grading Act, provides:

"That the Commissioner of Agriculture, Labor and Industry may, at the request of the owner of hay, provide rules and regulations for the inspection thereof at the market destination, and provide for the expense of such inspection, to be paid by the owner of hay."

This section makes it clear that the Department of Agriculture, Labor and Industry has the general supervision and charge of the grading of hay in Montana.

In your second question, you inquire whether a private citizen may swear to a complaint for a violation of the provisions of these Acts.

Section 9033, Revised Codes of 1907, provides as follows:

"Every person who has reason to believe that a public offense has been committed and that a certain person has committed such offense, must make complaint of such person before a magistrate of the township in which the offense was committed, or, if there is no magistrate in such township, before the nearest magistrate."

This section expressly gives private citizens the right, and makes it their duty, to swear to a complaint for any violation of the law, and the mere fact that someone is especially charged with the duty of enforcing a certain law does not affect the foregoing provision.

Your third inquiry is: "What officer is charged with the prosecution of cases arising from violations of these Acts?"

Section 3052, Revised Codes of 1907, provides in part:

"The county attorney is the public prosecutor, and must:

"I. Attend the district court and conduct on behalf of the State all prosecutions for public offenses."

The above statute places the prosecution of the violation of all laws upon the respective county attorneys.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.