

Weights and Measures, Authority and Duty of Deputy Inspector Of. Deputy Sealer of Weights and Measures, Within City. Authority of Deputy County Sealer of Weights and Measures, Within City. County, Duty to Provide Certain Weights and Measures. Fee for Inspection, How Often Charged. Charts Used in Inspecting Scales, Right to Prohibit. Action, Against Firms or Corporations Violating Weights and Measures Law.

Authority of county deputy sealer of weights and measures is not extinguished by appointment of city deputy.

Counties are required to keep standards of weights and measures.

The fee required by Sec. 26, Chap. 34, Laws of 1911, may be charged for each inspection.

Where the chart on which is indicated the price of the article sold is attached to a scale so as to operate automatically by the weight on the scale and such chart indicates the wrong price, the inspector may withhold approval from the scale.

Action may be maintained against firms or corporations or their resident agents who violate the weights and measures law.

October 10, 1911.

Hon. Joseph Corby,  
Inspector of Weights and Measures,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter dated September 28th, submitting for the consideration of this office the following questions relating to the construction of Chapter 34, Laws of 1911, to-wit:

1. Does the appointment of a deputy sealer of weights and measures within a city deprive the deputy county sealer of weights and measures of authority to act within such city?

2. Is it the duty of each county to provide itself with the necessary standard and equipments for testing weights and measures used within the county?

3. May a fee be charged each six months for the inspection of hay scales, etc., as named in Section 8 of said Chapter 34, and where a scale is inspected and condemned, is the owner of the scale liable for the payment of the inspection fee, and is he so liable for reinspection after such scale so condemned has been readjusted?

4. Has the inspector the right to prohibit the use of charts used in computing scales or balances which are found incorrect?

5. May action be maintained against firms or corporations or their resident agents, who violate the provisions of said Chapter 34?

The above questions will be considered and answered in the order named.

1. The powers and duties of deputy sealers of weights and measures, whether of counties or of cities, appear to be co-ordinate and equal in so far that bona-fide inspection and approval by one of such deputies is a complete defense to the owner of such scale or measure, so long as such scale or measure remains in the condition it was when so approved, but all are subordinate to the state sealer of weights and measures, not only as to the standard used, but as to the work done.

Secs. 3 and 4, Chap. 34, Laws of 1911.

2. The provisions of Sec. 221, Revised Codes, require the county sealers (county clerks), to keep in their offices the standards of weights and measures for their respective counties, and by the provisions of Section 222 this is made a proper charge against the county. The State Sealers, however, must select the material of which the original standards are made. These sections are not repealed by Chapter 34, Laws of 1911.

3. The fee, as required by Sec. 26 of said Chap. 34, is for the inspection and not for the certificate, hence the fee should be charged for each inspection. The dealer who uses a false or defective measure or weight certainly cannot claim exemption on that ground.

4. Where the chart on which is indicated the price of the article sold is attached to a scale so as to operate automatically by the weight on the scale, then, so far as the information which is thus given to the purchaser is concerned, it is a part of the scale itself, for the price is measured or indicated by the weight on the scale. In such case the chart and the scale are so directly and intimately connected that approval cannot be given to one without it operating as approval of the other. The result of such a computing scale is to give a wrong value to the article weighed, and that is the very evil intended to be suppressed. If that part of the measure which indicates the price is so constructed as to indicate the wrong price, then, if considered as an independent instrument "it is a cheat," and as such may be suppressed. The sealer of weights and measures may not regulate the price of commodities, neither may he, even impliedly, give sanction to a fraud. A public official charged with the execution and enforcement of a protective law is within his authority when he gives enforcement to the spirit and intent of the law. The very purpose of this law is to protect against underweights, and hence, to prevent overcharges. In the cases indicated you are fully justified in withholding your approval.

5. The law contains no exemptions, and grants no immunities,

hence, foreign firms and corporations who violate its provisions are equally liable with residents.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.