

Weights and Measures, Construction of Law. Milk, Cream, Etc., Sale Of. Butter Fat, Sale Of. Inspector of Weights and Measures, Duty Of.

Where butter fat containing any milk is sold by pound, the provisions of Sec. 19, Chap. 34, Laws 1911, that milk, etc., shall be sold by standard wine measures, do not apply.

January 23, 1912.

Hon. T. M. Swindlehurst,
Secretary of State,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 19th inst., submitting for the consideration of this office the question:

Do the provisions of Sec. 19, Chap. 30, Laws of 1911, providing that "all milk, cream or skimmed milk shall be sold only by standard wine measure," etc., apply to a sale and purchase, where the price to be paid is based upon the percentage of butter fat contained in such milk or cream, at so much per pound?

Where the sale is made of the milk, cream or skimmed milk, then the provisions of this section must be observed, for they are mandatory, but where the sale is only made of the butter fat contained therein, then the provisions of the section relating to the sale of milk by wine measure do not apply, and such butter fat may be sold by weight and not by measure, and the seller may himself extract the same from the milk if he so desires, but the mere fact that he leaves the butter fat in the milk does not constitute him a seller of milk. Hence, if the sale relates only to the butter fat, this statute relating to the sale of milk does not apply, and the test in such cases would be made of the scales that weighed the butter fat, rather than the test of jars or cans in which such butter fat was transported to market, but if a sale is made of the milk, then the measure—whether a can, jar, or bottle used in determining the quantities of milk is subject to inspection.

Very truly yours,

ALBERT J. GALEN,

Attorney General.