

**Pure Food Law. Weights and Measures. Statutory Construction, Pure Food Law. Packages, Sale By. Butter, Sold by Pound or Package.**

If butter is sold by the pound, such pound must contain 16 oz., without regard to the label that may be printed thereon. Butter may be sold by the package without regard to the weight which such package may contain.

January 30, 1912.

Dr. T. D. Tuttle,  
Sec'y, State Board of Health,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 19th inst., submitting two certain questions relative to the meaning of Chapter 130, Laws of 1911, to-wit:

1. If a customer calls for a pound of butter and is handed a package stamped "This package contains 15 ounces net," without any statement being made by the dealer as to the quantity, has the dealer violated the law?

2. If a package of butter is labeled "This package contains 15 ounces net," and the same is delivered to a purchaser who asks for a pound of butter, has the law been violated by the seller?

One of the purposes of this law, and particularly Sec. 5 thereof, is to prevent short weights and short measures without the knowledge of the purchaser. That section contains this statement:

"Any person, persons, firm or corporation selling or offering for sale any article of food as a pound, or any multiple thereof, except by actual weight, the net weight of which is less than sixteen (16) ounces, or the proper multiple thereof to represent the number of pounds sold or offered for sale \* \* \* \* shall be guilty of a misdemeanor."

Where, therefore, the purchaser calls for a pound of butter and in response to that call receives from the seller a package or roll of butter without any statements from the seller as to the quantity, and is charged for a pound of butter, he is presumed to receive what he calls for and pays for, and if the package or roll contains less than a pound it is a violation of this section of the law without regard to what might be stamped on the package or roll, for the purchaser is presumed to receive what he pays for.

However, this law does not require butter to be sold by the pound, nor does it attempt to prohibit the sale by packages or rolls, nor to fix the size or weight of such package or roll. There, is therefore, nothing to prohibit the dealer from selling 15 ounces rolls or packages, but he cannot legally sell them as pounds, and if a purchaser calls for a pound of butter and receives a package of butter labeled as above and is charged with a package, the dealer has not violated the

terms of the law, for if the charge is made "package of butter" the purchaser is thereby put on his guard to make inquiry as to how much there is in the package—but if he is charged with a "pound of butter" the law fixes the weight of a pound and the label on the package in that case would be immaterial. Of course, if the sale is made by package and the weight stamped on the package is wrong, it is a violation of Section 23, Chapter 34, Laws of 1911.

Very truly yours,

ALBERT J. GALEN,

Attorney General.