

State Horticulturalist, Authority of. Apples, Packing and Shipment of.

The jurisdiction or power of the state horticulturalist over fruit shipments is limited to making complaint before the proper magistrate.

August 19th, 1913.

Hon. M. L. Dean,
State Horticulturist,
Missoula, Montana.

Dear Sir:

I beg to acknowledge receipt of yours of the 14th instant, submitting several questions as to your authority in the matter of shipments of apples.

Your authority to act in regard to fruit shipments is found in Sec. 1923 A, of Chap. 121 of the Session Laws of the Twelfth Legislative Assembly. Chap. 113 of the Sessions Laws of the Thirteenth Legislative Assembly is what its title indicates—an act regulating the size of apple boxes, and the labeling and numbering thereof. It is in the nature of a penal statute and must be strictly construed; **that is, the power to act thereunder must be clearly defined and set out.**

Sec. 8 of said law is as follows:

"That any person, firm, company or organization who shall knowingly pack, or cause to be packed, apples in boxes, or who shall knowingly sell or offer for sale such boxes, in violation of the provisions of this act, shall be guilty of a misdemeanor, and subject to a fine of not less than ten (\$10.00) dollars, nor more than fifty (\$50.00) dollars."

It will be noticed that the act prohibited by this law is the packing or causing to be packed, or selling or offering for sale, fruit in boxes which do not come up to the standard set by the law. However, there is no provision in the law authorizing your board to seize any fruit or confiscate the same—the only penalty named in the statute being a fine for a misdemeanor. With this construction of the law in mind, I think that it cannot make any material difference as to who buys the fruit or where it is to be shipped. The unlawful thing is the packing of apples in some way not authorized by the law, or in offering them for sale within the state after they have been so packed.

You are therefore advised that your jurisdiction or power over fruit shipments is limited to making complaint before the proper magistrate; that the particular lot of apples in question is not being packed according to the standards set up by the law, or that the guilty person is offering for sale or selling fruit which is below the standard prescribed by the statute.

Yours very truly,

D. M. KELLY,
Attorney General.