

**Package or Container, Net Weight of Contents. Net Weight, of Contents of Package or Container.**

Where a commodity or article of merchandise in a package or container is sold or offered for sale in this state, and same bears a label showing in plain words and figures a correct statement of the net weight, measure or numerical account of its contents, such statement must be deemed to be correct, provided the variation between the statement on the label and the actual contents is no greater than provided for in the act.

November 5, 1913.

Hon. Dan J. Heyfron,  
County Attorney,  
Missoula, Montana.

Dear Sir:

I am in receipt of your letter of the 4th instant, which in view of the importance of the subject matter discussed to the commercial interests of our state, I take the liberty of quoting in part:

"Sec. 12 of Chap. 83, Session Laws of the Thirteenth Legislative Assembly, an act to provide for the regulation of sale of articles by weights, etc., provides that 'from and after January 1st, 1914, it shall be unlawful for any person \* \* \* to sell or offer for sale in this state any commodity or article of merchandise in a package or container without having such package or container labeled in plain, intelligible words and figures, with a correct statement of the net weight, measure or numerical count of its contents,' etc.

"We have been informed by a number of the merchants of this city, and especially the Garden City Brewing Company, that in the case of merchandise put up in bottles, that it is a mighty hard matter, and in fact almost an impossibility, to state the correct net weight of the contents of each bottle, without weighing each bottle, which in its case, on account of the large number filled daily, is prohibitory. This is true, for the reason that it is impossible to get bottles which hold exactly the same amount, especially large bottles.

"We have been advised where the net contents weight of bottles should be twenty-four ounces, that even though they are manufactured in the same plant, under the same conditions, they will hold anywhere from twenty-two to twenty-six ounces, and that the proportion containing more than twenty-four ounces is equal to the proportion containing less than twenty-four ounces.

"This being the case, these merchants declare that it is impossible for them to label these bottles so that the label will show the exact net weight of the contents of same, without, as I have stated first, weighing the bottle and then the contents, and which is in some lines of business impossible.

"In view of the fact that it is necessary for these parties, who seek this information, to secure their labels some time in advance, for their bottles and other containers, I would be very much obliged to your office for an opinion regarding the same, as soon as you can conveniently do so."

Paragraph C of the same section of the act provides in part as follows:

"A slight variation from the stated weight, measure or quantity for individual packages, not to exceed three per cent, is permissible; provided, that the variation is as often above as below the weight, measure or quantity stated."

This language, it will be seen, expressly qualifies that portion of the section quoted by you. It follows, therefore, without argument that when any commodity or article of merchandise in a package or container is sold or offered for sale in this state, bearing a label in plain, intelligible words and figures with a correct statement of the net weight, measure or numerical account of its contents, that such statement must be deemed to be correct within the meaning of the law, though there be a variation between the statement contained on the label and the contents of the package or container, not greater than such as indicated in the excerpt of the section herein above last quoted.

Yours very truly,

D. M. KELLY,  
Attorney General.