

Weights and Measures. Sales. Labels.

A sale of beer as quarts in bottles containing less than a quart, viz., one-fifth gallon, is an unlawful sale in the absence of a label showing the net weight or measure of the contents.

January 8th, 1914.

Hon. D. W. Doyle,
County Attorney,
Conrad, Montana.

Dear Sir:

I am in receipt of your letter of the 7th instant, wherein you request an opinion as follows:

"I wish that you would please give me an opinion upon the following questions: Is a saloon keeper liable, criminally, under Sec. 12 of Chap. 83 of the Laws of 1913, where he sells beer or other liquor in bottles that are supposed to contain a quart but which really are about four-fifths of a quart? Where the beer or other liquor has been sold to him in the bottles, is he compelled to have the bottles in such a case labeled as provided in that section with a correct statement of the net measure of the bottle's contents? I understand that an ordinary quart bottle of beer as it is sold to retail liquor dealers does not contain quite a quart and that it takes about five of these quart bottles to make a gallon. This beer, of course, is sold to the saloon keeper already bottled and is sold for quart bottles and the saloon keeper in retailing the bottles simply sells the beer as he receives it."

Under the express provisions of Sec. 12 of Chap. 83 of the Laws of the Thirteenth Legislative Assembly, it is essential to the sale of articles or commodities of merchandise in this state that the packages or containers be labeled in plain, intelligible words and figures, with a correct statement of the net weight, measure of numerical count of the contents, except there be an express agreement to the contrary by the parties to the sale. In order, therefore, to make the sale of beer lawful in bottles such as you indicate, they should be plainly marked or labeled as containing either one-fifth gallon each, or should be labeled so as to give the approximate net weight of each bottle. I am aware that it is manifestly impossible to bottle beer so that the exact contents of each bottle will be the same, for the reason that in the manufacture of the bottles themselves there is necessarily a slight variation in the cubical capacity of each bottle, but Subdivision C of the section referred to contains this qualification:

"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."

A variation such as you indicate, amounting to approximately twenty per cent, would in my judgment be more than the variation allowed by law to the sellers; in the absence of a label containing approximately a correct statement of the net weight or measure thereof, they would be criminally liable under the law.

Yours very truly,

D. M. KELLY,
Attorney General.