

**Weights and Measures, Construction of. Construction, Weights and Measures Law. Labels of Packages, Weights and Measures Law.**

Second paragraph, Sub. C, Sec. 12, Chap. 83, Laws of 1913, wrongly punctuated. Should be comma after word "cream," and law applies to articles of merchandise sold at greater price than ten cents, except milk and cream, and as to those, it applies without regard to price.

Labels should not contain words "approximately," but should contain the supposed true contents of the package or container. The law reads into labels the variations it permits.

February 7th, 1914.

Hon. A. H. McConnell,  
County Attorney,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 4th instant, submitting the question

"Relative to the construction of the second paragraph and also Subdiv. C Sec. 12, Chap. 83, Session Laws of 1913, relating to weights and measures."

The second paragraph of said Sec. 12 reads:

"Provided, further, that nothing in this section shall apply to commodities or articles of merchandise, except milk and cream offered for sale or sold in packages or containers at a price of ten cents or less per such package."

The law as it appears in the printed volume is erroneously punctuated. As printed, there is no comma following the word "cream." On examination, however, of the enrolled bill, we find that the phrase

"except milk and cream" is followed by a comma, hence the meaning, when properly punctuated, is very plain. That is, that the section does not apply to quantities or articles of merchandise sold in packages or containers at a price of ten cents or less, except milk and cream, and as to milk and cream, it does apply without regard to the size of the container. The law as punctuated in the printed volume is misleading. However, without regard to the punctuation, no other meaning could reasonably be given to this provision. The rules of construction in such case have been laid down by the supreme court of this state, in which it is held that

"Punctuation of a statute is not entitled to great weight in its construction."

State v. Pilgrim, 17 Mont. 311.

Subdiv. C of said Sec. 12 provides:

"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."

The evident meaning of this statute is that where the party has honestly endeavored to comply with the law in stating the correct weight or measure and through error has deviated therefrom, not exceeding three per cent, he has not violated the act, so as to be liable to the punishment therein provided. This deviation, however, from the true weight must be the result of error or oversight, and not intentionally. The label submitted in your letter reads, "Contents approximately 32 ounces." In this label the word "approximately" should be omitted, for the law reads that into the label, if it is necessary to be there. If the container is labeled, "Contents 32 ounces," the party purchasing knows that under the provision of the law there may be an error there not exceeding three per cent, and this error may be either above or below. I can readily understand that the honest dealer might hesitate to affirmatively state that the package or container is of a certain quantity or measure when there might be a slight error there, but the law itself provides for cases of that kind, and it is unnecessary for the dealer to copy the law or any part of it in his label. He simply labels the package or the container for what it contains if no error has been committed, and the law itself then makes provision for the slight errors, and the label is placed on the package or container subject to that law.

Yours very truly,

D. M. KELLY,

Attorney General.