

Horticulture—Receptacles—Standards—Fruits.

Department of agriculture may establish standards for receptacles for fruits but cannot require that the fruits be sold in those receptacles.

Mr. George L. Knight,
Chief of Division of Horticulture,
Missoula, Montana.

September 17, 1932.

My dear Mr. Knight:

You have requested an opinion and you state as follows:

“Again referring to section 3561, paragraph 4, states that the department of agriculture shall have power and it shall be its duty to establish and promulgate standards for open and closed receptacles for farm products and standards for the grades and other classification of farm products.”

You propose the following regulations:

“Regulation XIV: All fruit offered for sale in the State of

Montana must be in standard container in which such fruit is usually marketed, and must be marked according to the requirements of the Federal Food and Drug Act, except that the requirements of this regulation shall not apply to apples shipped in bulk or car lot or to fruit which is sold direct from producer to consumer."

An examination of section 3561, R.C.M. 1921 shows that you have the power to establish and promulgate standards for open and closed receptacles for farm products and standards for the grades and other classifications of farm products.

The regulation which you propose requires that all fruit offered for sale must be in a standard container. This goes far beyond the authority conferred by paragraph 4 of section 3561, which reads as follows:

"To establish and promulgate standards for open and closed receptacles for farm products and standards for the grade and other classification of farm products."

Under that section you are at liberty to establish standards, etc., but to make the regulation that such standards shall be in use and that no fruit may be sold in other than such standard container would be an act of legislation on the part of your department which goes beyond the powers conferred.

You are accordingly advised that you have no right to enforce such requirement.

Very truly yours,

L. A. FOOT,
Attorney General.