

Dairy Law—Butter—Trial—Short Weight—Dealers.

Prosecutions for the sale of short weight butter must be against the dealer selling at retail and in the county where the sale is made.

Mr. B. F. Thraikill,
Chief of Dairy Division,
Helena, Montana.

June 17, 1931.

My dear Mr. Thraikill:

You request an opinion on section 30, chapter 39, laws of 1931, standard butter measure, as follows:

“I would like very much to have a written opinion on section 30, standard butter measure, of the laws of 1931.

“Is the retailer or creamery or both liable for short weight butter? In which county should a complaint be filed—the county where the butter is manufactured or in the county where the butter is found?

“Some county attorneys take the stand that the complaint should be filed on creamery where manufactured; others say it should be filed at point of delivery as sale is not completed until goods are delivered.”

Previous to the enactment of section 30, chapter 39, laws of 1931, the matter of standard weight for butter was contained in section 30, chapter 93, laws of 1929, and it provided for packages of less than a pound, and the weight which such packages might contain. The law provided that any person, persons, etc., selling or offering for sale any article of dairy products as a pound, or any multiple thereof, the net weight of which is less than sixteen ounces, or the proper multiple thereof, shall be guilty of a misdemeanor, * * *

The law was amended by section 30, chapter 39, laws of 1931, to read as follows:

“The standard measure for the sale of butter, in the State of Montana, shall be sixteen (16) ounces (avoirdupois weight)

to the pound, exclusive of the wrapper or container, no tolerance in deficiency being allowed. All butter sold, offered or exposed to the retail trade, for sale in paper containers or wrappers, shall be in packages of one (1) or two (2) pounds, net standard avoirdupois weight, no tolerance for deficiency being allowed; provided, however, that packages of the weight herein specified may be made up of smaller component packages of wrapped butter in multiples of four (4) or eight (8) ounces each. Any violation of the provisions of this section shall constitute a misdemeanor and be punishable as provided in Section 49 of the Act hereby amended."

The first paragraph of the chapter relating to standard measure for the sale of butter does not make unlawful the sale of packages of butter of any other weight and anything in subsection 30, laws of 1929, to that effect has been amended or repealed by the above quoted section.

You will notice that it provides that all butter sold, offered or exposed to the retail trade, etc., shall be in packages as specified.

You are accordingly advised that the only sale which would be an unlawful sale so far as size of package is concerned is the sale to the retail trade. The wholesale of short weight butter from a creamery to retailer is not a crime under our laws, and you may prosecute a creamery only for short weight retail sales, and in no other case, and you may prosecute in case of sales from stores no matter how innocently they may sell short weight butter—this being one of the cases of *malum prohibita* and not *malum in se*. See the case of *Leggett vs. Purdue*, 16 Mont. 205.

Very truly yours,

L. A. FOOT, •
Attorney General.