

Opinion No. 448.**Food and Drug Act—State Board of
Health, Rules and Regulations—
Weights and Measures.**

HELD: The authority of the State Board of Health, under the Food and Drug Act, is confined to inspections for the purpose of enforcing the standards of purity required by the statutes and the sanitary conditions of places of business; it does not extend to the enforcement of the Weights and Measures Act.

January 27, 1934.

You have requested an opinion from this office on the following:

"1. Does this department have any jurisdiction under the existing laws over the statements of weights on packaged foods; that is, if we were to find some person, persons, firm or corporation selling a packaged food which had no statement at all of weight or a statement of weight which was not true within the limits prescribed in the Board of Health regulations, would we have the authority to file a complaint and prosecute the guilty party or would it be necessary for us to refer the matter to the State Sealer of Weights and Measures for his action?

"2. Under the existing laws has the State Board of Health exceeded its authority in drawing up regulation 117 defining the avoirdupois pound, liquid and dry measures? If the department has not exceeded its authority here, would we be within our jurisdiction in prosecuting a party for selling a dry product, for instance cranberries, by quart measure, who uses a liquid quart as the quart measure, where the cranberries or other dry product is advertised for sale as so many quarts for a certain price?

"3. Under the existing laws, does the State Board of Health have no supervision over the statement of weight on bread or should this by right come under the State Sealer of Weights and Measures? For instance, if a man is putting out a loaf of bread labeled as containing one and one-half pounds of bread, and upon our examination we find it to contain an appreciable amount less than this, could we take action to prosecute the guilty party or would it be necessary to refer the matter to the Secretary of State for his action,

The authority of the State Board of Health under the Food and Drug Act is confined, in our opinion, to inspections made for the purpose of determining whether foods and drugs handled and sold to the public conform to the standards of purity required by the statutes, and whether the places where foods and drugs are dispensed are kept clean and sanitary. The reference to the weight, marking and labeling of packages, we think, is to provide for such marking and labeling as will inform the public of the mixture or contents of the thing sold—indicia such as will convey information relating to the food or medical properties of the contents of such packages. We do not think it was the intent of the Food and Drug Act to authorize the Board of Health to inspect any goods offered for sale for the purposes of determining whether the quantity or weight conformed to the Weights and Measures Act. That authority is vested in another department.

Taking up your questions in order, our answer to No. 1 is "No."

Answering No. 2—insofar as your regulation 117 relates to marking of packages, and rule of measure of weights, etc., relates to the purity of foods and drugs, you are within your powers under the Food and Drug Act, but not otherwise.

Our answer to No. 3 is "No."