No. 188

DEPARTMENT OF AGRICULTURE—WEIGHTS AND
MEASURES—SALE OF COMMODITIES BY NUMERICAL
COUNT—WATERMELONS—PORK CHOPS—
MUTTON CHOPS

Held: Commodities or articles of merchandise such as watermelons, pork
chops, etc., may be sold by numerical count.

July 28, 1941.

Mr. Albert H. Kruse
Commissioner of Agriculture,
Labor and Industry
State Capitol Building
Helena, Montana

Dear Mr. Kruse:

You have requested an opinion from this office whether, under the provisions of Section 4246, Revised Codes of Montana, 1935, as amended, a merchant may sell watermelons, canteloupes, and such articles, also meat chops, such as pork chops, mutton chops, etc., by numerical count rather than by weight.

Subsection 1 of Section 4246, as amended by Chapter 146, Laws of 1939, provides:

> "It shall be unlawful for any person to sell or offer for sale in this state any commodity or article of merchandise, except by true net weight, measure, or numerical count, except where the parties otherwise agree. Contracts for work done, or for anything to be sold by weight or measure, shall be construed according to the standard hereby adopted as the standard of this state, except where the parties have agreed upon any other calculations of measurement, and all statements and representations of any kind referring to the weight or measure of commodities or articles of merchandise shall be understood in the terms of the standards of weights and measures aforesaid. . . ."

It must be noted this section prohibits the selling or offering for sale of any commodity or article of merchandise, **except by true net weight, measure, or numerical count.** The statute therefore permits the sale of any commodity or article of merchandise by **weight,** by **measure,** or by **numerical count.** It is obvious the articles mentioned come within the terms "articles of merchandise" or "commodities."

It is therefore my opinion watermelons, pork chops, and like commodities or articles of merchandise may be sold by numerical count.

<div align="center">Sincerely yours,</div>

<div align="right">JOHN W. BONNER
Attorney General</div>