

Opinion No. 78

**Fees—Inspection of Farm Products—Grading of Farm Products—
Standards—Grading of Corn Before Sale—
Sec. 3-1402 (b), RCM, 1947**

Held: 1. The Commissioner of Agriculture has statutory authority to assess charges for inspection of various farm products within the state.

2. Standard grades of Montana farm products are adopted from those promulgated by the United States Secretary of Agriculture for the same products.

3. Fresh corn or green corn is a vegetable and a farm product within the meaning of Section 3-1402 (b), RCM, 1947, and must be graded before it can be offered for sale.

October 10, 1958

Mr. Robert C. Letcher
Deputy County Attorney
Yellowstone County
Billings, Montana

Dear Mr. Letcher:

You have presented several questions for my opinion concerning the agricultural laws of the State. The inquiries will be answered seriatim.

Your first inquiry is by what statutory authority the State Department of Agriculture can assess charges for the inspection of farm products within Montana.

Section 3-213, RCM, 1947, provides an inspection fee for grain. See, also, Section 3-408, RCM, 1947. Section 3-510 provides a fee for testing protein in grain. Section 3-708 is an inspection fee for bean storage warehouses. Section 3-1201 provides an inspection fee for fruits or vegetables. Sections 3-1210 and 3-1216 provide a fee for nursery stock. Section 3-1205 provides an inspection fee for apples.

Your second inquiry is whether Section 3-1401, RCM, 1947, setting standard grades for Montana farm products controls the grading of vegetables when the United States Code standards are set for grain.

Section 3-1401, *supra*, provides in part:

"The standard grades for Montana farm products shall be limited to the United States grades covering the same products . . ."

On March 18, 1933, the State Commissioner of Agriculture adopted United States standards for strawberries, potatoes, onions, head lettuce, cabbages and dry beans. On April 24, 1933, the Commissioner adopted United States standards on apricots, beans (string, wax and green), cantaloupes, carrots, cherries, peaches, plums, prunes, tomatoes and watermelons.

Section 3-1401 *supra*, only requires the state to adopt the same standards as those promulgated by the United States Secretary of Agriculture for the same products. It is immaterial that the United States Code establishes standards for grain products since the United

States Secretary of Agriculture has set standards for farm products other than grain and the state has adopted these standards.

Your third inquiry is whether corn for table use or corn on the cob would be considered a vegetable or grain under Section 3-1402, RCM, 1947, which provides in part:

"(b) The term 'farm products' shall mean all products of the farm intended for table use and also to include beans; but shall not include livestock and its by-products; poultry and its products; apiary products; dairy products; grain and apples."

Webster's New International Dictionary defines grain as:

"b. In modern usage, the seed or seedlike fruit of any cereal grass, as wheat, maize, oats, rice, millet."

The same authority defines corn as:

"1. A small, hard particle; a grain."

If corn is not a grain, then any person who sells this product without first having it graded is subject to criminal prosecution. Thus, determining whether corn is a grain or a farm product will involve the construction of a penal statute. In *Shipman v. Todd*, 131 Mont. 365, 310 Pac. (2d) 300, the court stated that penalties are not favored and penal statutes must be strictly construed and will not be extended by construction. However, Section 94-101, RCM, 1947, provides:

"The rule of the common law, that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms with a view to effect its object and to promote justice."

In *State ex rel. Kurth v. Grinde*, 96 Mont. 608, 614, 32 Pac. (2d) 15, the court citing the above statute stated:

". . . Our duty is but to ascertain the intention of the Legislature." See, also, *Anderson v. Commercial Credit Co.*, 110 Mont. 333, 337, 101 Pac. (2d) 367.

Section 3-1409, RCM, 1947, states that the intent of the Act is to regulate the sale of farm products intended for table use. Fresh green corn when sold for eating purposes, canning or freezing is considered a fresh vegetable. When mature, dry corn is sold for milling, feed or seed it is considered a seed or grain. There is no doubt that fresh corn or green corn is intended for table use. To conclude that the term "farm products" excludes fresh corn or green corn because it is a grain would defeat the intent of the Legislature. It must be noted, however, that Section 3-1409, RCM, 1947, excludes farm products offered for sale in small retail packages or by the grower himself.

Therefore, it is my opinion that the Commissioner of Agriculture has statutory authority to assess charges for the inspection of various

farm products within the state; that standard grades of Montana farm products are adopted from those promulgated by the United States Secretary of Agriculture for the same products and that fresh corn or green corn is a farm product within the meaning of Section 3-1402 (b), RCM, 1947, and must be graded before it can be offered for sale.

Very truly yours,
FORREST H. ANDERSON
Attorney General