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August 7, 1985

ATTORNEY GENERAL OPINION NO. 85-97

Kenneth M. Wilke
Chief Counsel
Board of Agriculture
109 S.W. 9th Street
Topeka, Kansas 66612-1208

Re: Agriculture -- Sale and Distribution of
Agricultural Seeds -- Unlawful Acts; Sale of
Agricultural Seed on Grower's Premises

Synopsis: K.S.A. 2-1421(c), as amended by L. 1985, ch. 10,
§4, permits a grower of agricultural seed to sell
on his or her own premises seed which the grower
has produced and which is free of noxious weed
seed, without first having the seed tested and
labeled as provided by K.S.A. 2-1416, as amended by
the same act. The term "sell" as used in
subsection (c) includes advertising and exposing
for sale of the seed. Such activities, along with
the actual sale of agricultural seed, are not
permitted by anyone who is not a grower unless the
seed has been tested and labeled pursuant to K.S.A.
2-1415 et seq. Cited herein: K.S.A. 2-1415,
2-1416, 2-1417, 2-1421, all as amended by L. 1985,
ch. 10; 50-624.

* * *

Dear Mr. Wilke:

As Chief Counsel for the Kansas State Board of Agriculture,
you request our opinion on a question concerning the scope of
K.S.A. 2-1421, as that statute has been amended by Laws of
1985, chapter 10, section 4. Specifically, you inquire
whether a grower of agricultural seed may advertise the same

for sale, when the seed is being offered on his or her premises, has been produced by the grower and is free of noxious weed seed.

Chapter 10 of the Session Laws of 1985 relates to the sale of agricultural seed, and amends K.S.A. 2-1415, -2-1416, 2-1417 and 2-1421. As amended by section 2 of the act, K.S.A. 2-1416 provides that "except as provided in subsection (c) of K.S.A. 2-1421, and amendments thereto, it shall be unlawful for any person to offer or expose for sale, sell or exchange any agricultural seed for planting or seeding purposes that has not been tested or labeled." K.S.A. 2-1421(c), as amended, in turn provides that:

"it shall not be a violation of this act for the grower of agricultural seed to sell on the grower's premises for planting or seeding purposes, agricultural seed which is not tested and labeled when the seed is produced by the grower and is free from noxious weed seed."

This subsection acts as an exception to the general rule stated in subsection (a) of the same statute, wherein it is made unlawful for any person to "sell, offer for sale or expose for sale any agricultural seed for seeding purposes" unless it has first been properly tested and labeled.

As set forth in your letter, the Board of Agriculture believes that the exemption from testing and labeling provided in K.S.A. 2-1421(c), as amended, applies only to the sale of seed. The following statement of statutory construction from the case of Lakeside Village Improvement District v. Jefferson County, 237 Kan. 106 (1985) is offered in support of this conclusion:

"It is a fundamental rule of statutory construction, to which all others are subordinate, that the purpose or intent of the legislature governs when the intent can be ascertained from the statute, even though words, phrases or clauses at some place in the statute must be omitted or inserted." Syl. §3.

In that the legislature used only the word "sell" in the exception to the general requirements of testing and labeling, the board feels that the additional activities listed above,

which involve essentially the advertising of seed prior to sale, should still be prohibited.

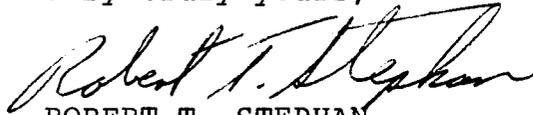
However, we do not believe that the issue is so clear cut as to allow only the application of the above rule of construction. The word "sell" is capable of being interpreted as including activities prior to the actual transfer of consideration for the item being offered, as has been previously recognized by Kansas courts. Brown v. Gilpin, 75 Kan. 773, 783 (1907); Orr v. Rieger, 133 Kan. 558 (1931). Additionally, the fact that the legislature added the activities of offering or exposing seed for sale in the general prohibition of K.S.A. 2-1421(a), as amended, merely indicates that the legislature wished to make criminal even those actions which did not involve an actual sale. See, e.g., K.S.A. 50-624(c), which defines "consumer transaction" to include both sales and solicitations for sales. Since K.S.A. 2-1421(c) can be interpreted more than one way on its face, we may employ other extrinsic aids in determining the scope of the language therein [Hunter v. Haun, 210 Kan. 11 (1972)], one of which is the legislative history of the bill.

As noted above, the statute was extensively amended by the 1985 Legislature. During the course of the session, the act amending K.S.A. 2-1421 was considered by the Agriculture and Small Business Committee of the House of Representatives. At hearings on the bill, two separate amendments were proposed to subsection (c) by the Kansas Seed Dealers Association. One had the effect of specifically prohibiting both the advertising and exposing of the seed for sale in any manner, while the second allowed only the erection of a sign advertising the seed upon the premises of the grower. Both were presented to the committee, and both were not included in the bill as passed. In considering this historical background in determining the intent of the legislature, we do not believe that an interpretation should be placed in the statute which was not formally adopted by the legislature when it had an opportunity to do so. In short, when given not one but two different ways in which to specifically prohibit advertising of seed by growers, the legislature declined to do so. We accordingly conclude that K.S.A. 2-1421, as amended, permits the advertising and exposing for sale by growers of seed which meets the requirements set forth therein.

In conclusion, K.S.A. 2-1421(c), as amended by L. 1985, ch. 10, §4, permits a grower of agricultural seed to sell on his or her own premises seed which the grower has produced and which is free of noxious weed seed, without first having the

which is free of noxious weed seed, without first having the seed tested and labeled as provided by K.S.A. 2-1416, as amended by the same act. The term "sell" as used in subsection (c) includes advertising and exposing for sale of the seed. Such activities, along with the actual sale of agricultural seed, are not permitted by anyone who is not a grower unless the seed has been tested and labeled pursuant to K.S.A. 2-1415 et seq.

Very truly yours,



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Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw