

CHAPTER 27

FOODS; WHOLESALE PRODUCE DEALERS

27.01 DEFINITIONS.

HISTORY. 1931 c. 394 s. 2; M. Supp. s. 6240-18½a; 1939 c. 251 s. 2; 1943 c. 479 s. 1.

Evidence sustains the finding that plaintiffs had no notice or knowledge that the purchasing agent for the defendant wholesale produce company was acting contrary to instructions or in fraud of his principal's interest; and plaintiffs are entitled to judgment. *Rausch v Aronson*, 211 M 272, 1 NW(2d) 371.

"Produce" as used in this chapter means and includes "poultry and poultry products." *Radloff v Bragmus*, 214 M 136, 7 NW (2d) 491.

Defendant sold the strawberries on May 12, so the due date was May 19, and as notice of defendant's default was not given to the commissioner within 30 days after the due date, the surety company cannot be held. *Leasure v Clarkin*, 214 M 423, 8 NW (2d) 521.

Although ice-cream manufacturers purchase cream from creameries instead of from farmers, they come under the terms of this act and must secure a license. 1938 OAG 476.

Canning factories and pickle factories both come under this act. OAG Aug. 4, 1941, (Agriculture).

No conflict between the provision requiring a wholesale dealer in fish to get a license from the commissioner and the one requiring him to get one from the Division of Game and Fish. 1934 OAG 408.

"Game and fish" included. 1934 OAG 408, Jan. 13, 1934 (136g).

"Due date" as applied to ice-cream manufacturers. 1938 OAG 476, Oct. 28, 1937 (832j).

"Produce" includes butterfat. 1938 OAG 478, Jan. 19, 1937 (832j-1).

As used in Chapter 27, "produce" of the farm does not include hides or furs of wild animals. OAG Jan. 24, 1945 (832J-7).

A license is not required for a dealer in dried fruits. OAG Jan. 30, 1945 (832b).

Fish brokers dealing in canned fish do not require a license. OAG Jan. 30, 1945 (832h).

27.02 WHOLESALE DEALERS OF PRODUCE.

HISTORY. 1931 c. 394 s. 1; M. Supp. s. 6240-18½; 1939 c. 251 s. 1; 1941 c. 318; 1943 c. 312 s. 1.

The duty imposed by Laws 1931, Chapter 394, on the commissioner of agriculture generally to enforce the law against wholesale dealers in produce (as without a license) involves the exercise of judgment and discretion, and is not in that class of ministerial official duties, nonperformance of which may result in liability to one proximately damaged by the non-feasance. *Cook v Trovatten*, 200 M 221, 274 NW 165.

To enforce conditions of a wholesale dealer's bond. *Rausch v Aronson*, 211 M 273, 1 NW(2d) 371.

One dealing exclusively in wild blueberries is not a wholesale produce dealer. OAG Sept. 1, 1944 (832).

Food manufacturers who buy in wholesale quantities are not within the scope of Chapter 27. OAG Jan. 30, 1945 (832j-11).

27.03 DEALERS LICENSED.

HISTORY. 1931 c. 394 s. 3; M. Supp. s. 6240-18½ b.

The plaintiff sold goods to the Austin company which were not paid for. This action is against the commissioner for damages because he permitted the Austin company to continue business without a license and without a bond. A demurrer to the complaint was properly sustained. *Cook v Trovatten*, 200 M 221, 274 NW 165.

Section 197.59 does not affect section 27.03 in any way. A veteran must procure a license as do others. 1934 OAG 109, Nov. 13, 1934 (832i).

A non-resident purchasing rough fish from the commissioner of conservation and who has given the usual bond to said commissioner, need not furnish a bond as required by this chapter, unless he handles other produce. OAG June 13, 1944 (832j-3).

27.04 LICENSES; FEES; BONDS.

HISTORY. 1931 c. 394 s. 4; M. Supp. s. 6240-18½c; 1935 c. 186 s. 1.

The general rule that the liability of a surety for the acts of one or more individuals does not extend to acts performed by him or them jointly with others does not apply in the instant case. *Trovatten v Minea*, 213 M 544, 7 NW(2d) 390.

See, *Leasure v Clarkin*, 214 M 421, 8 NW(2d) 521.

Wholesale produce dealers' license having expired before order of commissioner revoking license could be reviewed by certiorari, the case is moot and is dismissed. *Dehming v Marshall Prod. Co.* 215 M 339, 10 NW(2d) 229.

A surety cannot terminate his liability on bond by a mere notice. OAG Aug. 31, 1944 (832a-9).

27.05 ADDITIONAL BONDS.

HISTORY. 1931 c. 394 s. 5; M. Supp. s. 6240-18½d.

See, *Trovatten v Minea*, 213 M 544, 7 NW(2d) 390; *Leasure v Clarkin*, 214 M 422, 8 NW(2d) 521.

27.06 COMPLAINTS FILED WITH COMMISSIONER.

HISTORY. 1931 c. 394 s. 6; M. Supp. s. 6240-18½e; 1935 c. 186 s. 2.

Since the statute gives a right of action, the bond must be read in the light of this. Although the state is named as obligee, it must be understood to be so named for itself and those entitled by the state to maintain an action on the required bond. *Graybar v St. P. Mercury*, 208 M 482, 294 NW 654.

Suspension of license when licensee is issuing bad checks. OAG Feb. 9, 1934 (218g-12).

After filing a complaint with the commissioner, the notice served upon the wholesale produce dealer must be personal. OAG Sept. 1, 1944 (832k-3).

27.07 GRADES ESTABLISHED.

HISTORY. 1931 c. 394 s. 7; M. Supp. s. 6240-18½f.

The commissioner properly adopted and made operative the rules and grades of the federal agricultural marketing administration. *Radloff v Bragmus*, 214 M 136, 7 NW(2d) 491.

27.08 DEALERS MAY FILE BRANDS OR LABELS.

HISTORY. 1931 c. 394 s. 8; M. Supp. s. 6240-18½g.

27.09 INSPECTION CERTIFICATE.

HISTORY. 1931 c. 394 s. 9; M. Supp. s. 6240-18½h.

27.10 PRODUCE EXAMINED, WHEN.

HISTORY. 1931 c. 394 s. 10; M. Supp. s. 6240-18½i.

27.11 SHIPMENTS ON CONSIGNMENT.

HISTORY. 1931 c. 394 s. 11; M. Supp. s. 6240-18½j.

27.12 SHIPPER MAY COMPLAIN TO COMMISSIONER.

HISTORY. 1931 c. 394 s. 12; M. Supp. s. 6240-18½ k.

27.13 INVESTIGATION OF COMPLAINTS.

HISTORY. 1931 c. 394 s. 13; M. Supp. s. 6240-18½L.
Suspension of license. OAG Feb. 9, 1934 (218g-12).

27.14 RULES AND REGULATIONS.

HISTORY. 1931 c. 394 s. 14; M. Supp. s. 6240-18½m.

27.15 COOPERATION WITH UNITED STATES DEPARTMENT OF AGRICULTURE AND OTHER AUTHORITIES.

HISTORY. 1931 c. 394 s. 15; M. Supp. s. 6240-18½n.

Cooperation with the federal government agencies in the inspection of cheese. Formula for disposition of inspection fees. OAG Jan. 14, 1944 (136).

27.16 BUYERS OF DOMESTIC FOWLS; DEALERS' REGISTERS.

HISTORY. 1927 c. 319 s. 1; M.S. 1927 s. 6240-19; 1943 c. 102 s. 1.

27.17 REGISTER PRIMA FACIE EVIDENCE.

HISTORY. 1927 c. 319 s. 2; M.S. 1927 s. 6240-20.

27.18 FAILURE TO KEEP REGISTERS; FALSE ENTRY THEREIN.

HISTORY. 1927 c. 319 s. 3; M.S. 1927 s. 6240-21.

27.19 VIOLATIONS; PENALTIES.

HISTORY. 1931 c. 394 s. 16; M. Supp. s. 6240-18½o.

27.20 ENFORCEMENT.

HISTORY. 1931 c. 394 s. 17; M. Supp. s. 6240-18½p; 1935 c. 186 s. 3.

DUTY OF THE COMMISSIONER to enforce this law is executive and not ministerial so that its performance cannot be compelled by mandamus nor can recovery be had for damages allegedly caused by official nonfeasance. *Cook v Trovatten*, 200 M 221, 274 NW 165.

The office of the commissioner is not ministerial because the commissioner, while having some ministerial duties, is required to exercise a large degree of discretion in the discharge of his general executive functions. *Cook v Trovatten*, 200 M 224, 274 NW 165.

A surety is not relieved from liability by the adding of greater security to the principal's obligation without the surety's knowledge or consent. The fact that the wife of principal, on bond conditioned on principal's faithful performance of duties as a licensed dealer, acted as husband's assistant would not relieve surety from liability. *Trovatten v Minea*, 213 M 534, 7 NW 2nd 390.

In an action upon a wholesale produce dealer's bond, authority may be proven circumstantially by showing a cause of dealing between the alleged principal and

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agent. When suit is brought against the principal-it is not necessary to plead the fact of agency. *Rausch v Aronson*, 211 M 272, 1 NW 2nd 371.

The wholesale dealers law applies to dealings between consignor and consignee. A shipper's action on bond of wholesale dealer to whom strawberries were consigned for sale was barred by shipper's failure to give notice of dealer's default to the commissioner within 30 days after the "due note" defined as seven days after the date of sale by the dealer, even though notice was given less than 30 days after the dealer's check was dishonored. *Leasure v Clarkin*, 214 M 420 8 NW 2nd 521.