

N.D.A.G. Letter to Johnson (May 30, 1980)

May 30, 1989

Mr. Dennis E. Johnson
McKenzie County State's Attorney
P.O. Box 1288
Watford City, ND 58854

Dear Mr. Johnson:

Thank you for your May 8, 1989, letter concerning the North Dakota seed laws. You ask about an apparent conflict between N.D.C.C. § 4-09-14 and N.D.C.C. § 4-09-15.

N.D.C.C. ch. 4-09 generally governs the State Seed Department and other seed matters, including when and how seed must be labeled. N.D.C.C. §§ 4-09-10, 4-09-11, 4-09-11.1, and 4-09-11.2 specify the labeling requirements for, respectively, agricultural seed, vegetable seed, flower seed, and tree and shrub seed. N.D.C.C. § 4-09-15(5) provides that a farmer who grows his own seed and sells only his own seed and does not advertise or use a third party as an agent or broker to bring buyer and seller together is exempted from the labeling requirements of these sections. (The Agriculture Department has implemented and further clarified N.D.C.C. § 4-09-15(5) in N.D. Admin. Code § 74-02-01-04.)

N.D.C.C. § 4-09-15 does not exempt farmers who are selling their own seed from the provisions of N.D.C.C. § 4-09-14. N.D.C.C. § 4-09-14 prohibits a number of actions relating to the sale of seed, including selling any agricultural, vegetable, flower, or tree and shrub seed that is not properly labeled.

It is true, therefore, as you point out in your letter, that the prohibitions of N.D.C.C. § 4-09-14 are not dealt with in the exemption section, N.D.C.C. § 4-09-15.

However, there is no conflict between these two sections. N.D.C.C. § 4-09-14(1)(b) specifically states that it is unlawful to sell seed if "[s]uch seed is not labeled in accordance with the provisions of this chapter." (Emphasis supplied.) Also, N.D.C.C. § 4-09-14(2) provides that it is unlawful to "[d]etach, alter, deface, or destroy any label provided for in this chapter." (Emphasis supplied.) Because of the exemption established in N.D.C.C. § 4-09-15(5), "this chapter," i.e., N.D.C.C. ch. 4-09, does not require labels for seed sold by farmers under the circumstances enumerated in N.D.C.C. §§ 4-09-15(5), and, therefore, the labeling provisions of N.D.C.C. § 4-09-14 would not apply to such farmers.

Thus, as long as a farmer meets the requirements of N.D.C.C. § 4-09-15(5) and N.D. Admin. Code § 74-02-01-04 in selling his own seed, he does not have to meet the labeling requirements of N.D.C.C. ch. 4-09.

It should be noted that farmers who meet the requirements of N.D.C.C. § 4-09-15(5) are not exempted from the other provisions of N.D.C.C. § 4-09-14 (for example, the provisions prohibiting false or misleading labeling, failing to comply with a "stop-sale" order, or using the State Seed Department's name for advertising purposes). Those prohibitions would still apply even if a farmer is exempt under N.D.C.C. § 4-09-15(5).

Further, any sales that do not meet the requirements of N.D.C.C. § 4-09-15(5) and N.D. Admin. Code § 74-02-01-04 are subject to all the labeling requirements of N.D.C.C. ch. 4-09, and seed not labeled in accordance with these requirements is subject to the prohibitions of N.D.C.C. § 4-09-14.

There are criminal and civil penalties for violation of these requirements. See N.D.C.C. § 4-09-24.

Sincerely,

Nicholas J. Spaeth

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