

**N.D.A.G. Letter to Roach (Nov. 15, 1988)**

November 15, 1988

Mr. Robert Roach  
Assistant Seed Commissioner  
ND State Seed Department  
State University Station  
Fargo, ND 58105

Dear Mr. Roach

Thank you for your October 13, 1988, letter requesting my interpretation of the final paragraph of N.D.C.C. § 4-09-15. That paragraph states as follows:

4-09-15. Exemptions.

No person shall be subject to the penalties of this chapter for having sold, exposed for sale, or transported for sale in this state any agricultural, vegetable, flower, or tree and shrub seeds which were incorrectly labeled or incorrectly represented as to kind, variety, or origin and which could not be identified by examination thereof, unless such person has failed to obtain an invoice or grower's declaration stating the kind, or kind and variety, and origin, if required, or has failed to take such other precautions as may have been necessary to ensure that the seed was properly identified.

It is my opinion that this paragraph serves to protect from sanction those sellers of mislabeled seeds who have in good faith taken reasonable precautions to avoid such mislabeling. For example, if someone sells a seed, identified as Variety A, but which is in fact Variety B, he may be subject to criminal or civil penalties as set out at N.D.C.C. 4-09-24. However, if the difference between Varieties A and B is not apparent by examination and if the seller has a bona fide declaration from the seed grower that the seed is Variety A, the seller will not be subject to criminal or civil penalties even though the seed variety he sold was not as represented. Similarly, if he had the seed tested and the test results erroneously showed the seed to be Variety A, he would be exempt from civil or criminal penalties because the misrepresentation occurred despite his precautions taken to insure that the seed was properly identified.

I do not know what reasons prompted the enactment of this particular statute. However, I hope this information is helpful to YOU.

Sincerely,

Nicholas J. Spaeth

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