

THE REGULATORY DIVISION AND THE POTATO & VEGETABLE INDUSTRY

L. R. Armstrong
Assistant Supervisor, Regulatory Division
Washington State Department of Agriculture, Olympia, Washington

The purpose of my visit here today is to acquaint you with the work of the Regulatory Division and advise you how this division may best be of service to you.

A brief resume of the duties involved in this division seems in order.

The area in which most of you here are interested is the administration of the Commission Merchants Act, which licenses and regulates dealers, cash buyers, commission merchants, and brokers.

The Regulatory Officer with whom many of you are acquainted has three basic fields to cover; brand inspection, enforcement of the Commission Merchants Act, and enforcement of any agricultural law when assistance is requested by another division, such as Horticulture or Animal Industry.

The combination of these three fields in one enforcement program is good government, designed not only to hold down costs, but to offer better service.

It has become, for instance, quite common knowledge in agricultural areas that a Regulatory Officer to assist you with your problems is present at every Public Livestock Market in the state on sale day. He is there for the purpose of brand inspection, but also receives many complaints at that point which he later checks out himself or refers to his District Office for further attention.

This division then has, in effect, 32 branch offices one day per week where you can seek our assistance.

I am here today to suggest to you things which you can do to better protect your own interest, and things you can do that the Regulatory Division may be of better service to you, as the duty of the Regulatory Officer is to assist and protect the agricultural producer and dealer from unscrupulous practices.

The basic purpose of the Commission Merchants Act is to attempt to assure that the agricultural products of the state of Washington are properly paid for.

It is impossible for any law or enforcement program to be successful without the assistance of the people it is designed to protect.

If the producer is aware of the limitations and latitudes of the various license categories he can then realize where he has some protection and where he does not.

The first category, cash buyer, is extremely limited. The cash buyer must pay in cash or currency, certified checks or the like, at the time of taking possession or control of agricultural commodities.

The limitations of this license are necessary because there is no bond posted, and most of these operations are carried on from a truck, purchasing in the production area and selling wholesale in consumption areas.

This license category has an important place in the fruit and vegetable industry and even for small livestock operators but causes a great deal of trouble in hay or any commodity which by its nature requires the load to move down the road to a scales before value can be determined.

The second category is bonded dealer, and this fits more operations than the others combined. Because of the bond more latitude is permitted and dealers may pay by personal or company check in the normal course of business. If no agreement as to payment is made in a sale to a dealer the account must be paid within 30 days. The seller has the right to insist on immediate payment or to stipulate when payment is to be made. If payment is to be deferred beyond 30 days it may lawfully be done by the dealer only with a written contract.

The dealer must keep complete records of all purchases and must furnish a copy to the seller. He must file a \$3000 surety bond.

The third category is the commission merchant. The commission merchant is obligated to render complete accounting and payment of proceeds within 10 days after he receives such proceeds. If the consignor requests, the commission merchant must submit to the consignor a true written report of such sale showing amount sold and selling price, by the close of the business day following such a sale. The commission merchant is bonded in the amount of \$5000.

The fourth category is the broker. The broker arranges sales, but does not handle either proceeds or product.

All categories may have agents, who are bound to operate in the same manner as the principal. The purpose of the agent's license is to establish responsibility to the principal.

This law is designed for the protection of agricultural producers, but no law works by itself. The producer who tells the commission merchant or the dealer to take his crop and do the best he can with it has no recourse if this proves to be not good enough.

Many written contracts protect only one way.

Last year we had problems with a number of complaints against the same dealer in potatoes on which a written contract was made. The contract stated X dollars per ton for all U.S. Commercials f.o.b. the sorter. The growers then assumed this to be so. Further down in the contract was the statement "the grower guarantees that all potatoes will be accepted by the person to whom the dealer sells the potatoes." Many shipments of these potatoes were not accepted and were not paid for, and the dealer could not be required to pay for these potatoes.

This written contract really protected only the dealer, yet more than 20 growers had signed it in good faith believing their sale was f.o.b. the sorter, when it actually was f.o.b. final delivery, acceptance guaranteed.

Producers, or producer groups, willing to invest a year's time and expense in producing a crop would do well to study carefully the conditions under which they are willing to sell their crops. This too is true of many honest buyers, who sometimes find themselves forced to pay for a commodity they cannot resell.

The terms of sale in any contract should be clear and concise and in writing, signed by buyer and seller. Both parties should clearly understand their rights and their liabilities. Study the whole contract, or have a competent attorney do it for you and explain exactly what it means. Do not merely refer to the parts which look good to you, they may be countered by a clause further on which changes the pattern.

Insist upon a record of delivery in exchange for your products upon delivery. It may be the only thing on which you can base a claim.

The manifest of cargo form the Department makes available satisfies this need for most commodities. Usually it constitutes the only proof of claim this department has to work with in bon claims.

Insist that the licensee purchase according to the provisions of his license. If you intentionally let him violate you are encouraging him to get in so deep he can't get out.

The producer or shipper who continues to sell to a poor credit risk after he is aware of this fact is asking for trouble, and often find it.

If a licensee fails to pay, we can revoke his license, but if the industry gives him \$100,000 worth of credit realizing he is a bad risk the recovery on his bond will be inadequate.

Be fair to your dealer. The industry needs him. If you hang him with a bunch of junk you are hurting the whole industry.

Report violations right away. If a dealer has one bad check out, he may have several, and may get in deeper by you failing to report.

We realize as well as you do that if a dealer or commission merchant handling a large volume defaults, the bond is not adequate.

The chief protection of a bond is the financial scrutiny given the licensee by the surety.

In some fields, such as hay, this bond seems adequate, since hay growers as a group are the most conscious of the Commission Merchants Act and its protection, and as a group report violations best.

In some fields the bond might possibly be better on a sliding scale according to the volume, if past experience with defaulting firms is any criterion, but this method too is subject to criticism.

It is easy to say that a firm should bear heavy bonding. We had much pressure at the time these bond amounts were set by the 1959 legislature to have bonds of double and triple this amount.

A net worth of \$15,000 to \$25,000 is required for a \$3000 surety bond, depending on the surety company and credit record of the applicant.

Recently we asked some surety companies to spot check their records and advise us what mortality might occur if we raised dealer bonds to a \$5000 minimum. Their estimate was a loss of 25% of our dealers through inability to secure a bond since most companies require a net worth of \$35,000 to \$40,000 for a \$5000 bond.

Critics who point out that fidelity bonds are issued to one million dollars or more on character alone fail to realize that a fidelity bond is ineffective except in case of a proved felony. A surety bond covers the man not paying his bills.

The present law, which has been effect since January 1, 1960, places the burden of prorata on bond claims upon this Department.

In most cases, this has greatly simplified bond collections for injured parties and has reduced the expense for both the surety company and the affected producer.

Occasionally, when we have a complicated bankruptcy, or are unable to gain access to proper records, it becomes as time consuming as under the old method, where bond claims usually took six months to a year to settle, if they were ever settled.

Normally, we get payment from sureties on demand, as soon as we are sure the claims are proper and all creditors are located.

It has placed an extra administrative burden upon our office, but this is not important, as we feel it does a better job for the industry.

How do you report a complaint to the Regulatory Division? Either contact your local Regulatory Officer or write direct to the Regulatory Division, Department of Agriculture, P. O. Box 120, Olympia.

Tell us the full details of your complaint and be prepared to furnish whatever written evidence you have.

Our action in the matter varies according to the complaint. 80% of these matters can be resolved in a very short time through contacting the dealer and in some instances getting the two parties together informally. Some cases are such flagrant violations the matter is immediately scheduled for regular hearing on the normal 20 days notice.

In emergencies, when to permit the licensee to continue even for the 20 day period required by such notice, might jeopardize possible sellers a hearing can be called on 24 hours notice and the licensee required to show cause why he should not be suspended until a regular hearing is held. We have used this provision a number of times.

A departmental hearing is for the legal purpose of determining whether or not a license should be suspended or revoked, or whether a conditional or probationary order shall be issued. As a practical matter, such hearings often resolve the differences between seller and dealer - straighten out the situation as to payment, and the licensee may be allowed to continue in business.

Many matters resolve themselves merely by the beginning of an investigation by the department.

A recent case of this type occurred when some bean growers in Western Washington registered a complaint to the department alleging breach of contract by a processor-dealer. Though they had tried to resolve the matter before filing a complaint to us they had received no satisfaction.

The department made a complete investigation and advised the processor of its findings and also advised the matter was being called to hearing.

Thereupon the processor offered a settlement of \$25,000 damages to the six growers involved, which was accepted in full payment of damages and the complaint was withdrawn.

The conditional license provision of the Commission Merchants Act has proven to be a tool valuable to the industry.

Occasionally a dealer gets in financial difficulties not entirely of his own making, caused by market conditions or other factors, and he cannot pay his bills in full. If his creditors agree, it is possible to issue a conditional license, after hearing, which will allow him to continue in business as long as he meets an agreed schedule of payment. We have used this tool on several occasions with good success.

The agricultural industry cannot operate without its dealers, commission merchants, brokers, or even its cash buyers.

A number of licenses are revoked each year after hearing. Approximately 200 former operators are on "hold" lists and will not be relicensed except after hearing or close scrutiny since they have been violators in the past, but by and large the operator of today is a good business man, trying to make an honest profit as his means of livelihood.

The administration of this program is not paid for by appropriated funds, but through the license fees of the affected licensees alone. The licensee who sells to another licensee has the same protection as a producer.

We welcome your suggestions at any time as to how this program can be improved. Its only purpose is to assist the industry.