



STATE OF KANSAS

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January 4, 1979

ATTORNEY GENERAL OPINION NO. 79- 5

Donald D. Watson, Director
Kansas Grain Inspection Dept.
535 Kansas Avenue
Topeka, Kansas 66603

RE: Grain Inspection Department - Agreements With
Federal Grain Inspection Service, USDA - Authority
K.S.A. 34-101 et seq.

SYNOPSIS: The Kansas State Grain Inspection Department is authorized and directed to enter into contracts and agreements necessary to co-operate with federal agencies to make procedures uniform in examining grain and grain warehouses. Where Kansas laws impose special duties or requirements, which appear to conflict with the federal agency suggested contract, effort should be made to work out language to permit agreed exceptions. If this cannot be done, then the Kansas legislature should be informed of the problem and asked to consider an amendment to the laws.

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Dear Mr. Watson:

You submit a copy of a proposed agreement with the Administrator of the Federal Grain Inspection Service, United States Department of Agriculture, required in order that the Kansas Grain Inspection Department may be designated as an "Official Agency". You ask if this contract is in any way in conflict with Kansas law and also if it would create problems which you cannot administer?

Donald D. Watson, Director
January 4, 1979
Page Two

First, the Kansas State Grain Inspection Department is authorized and directed to enter into contracts and agreements necessary to cooperate with federal agencies to make procedures uniform in examining grain and grain warehouses. K.S.A. 34-101(b) and (c). This philosophy should be the basis of decisions in this matter.

Article II of the contract, Section A(2) requires that all "official" services be rendered "within the agency's designated geographic areas." You point to K.S.A. 34-101(d) which authorizes your grain inspection and weighing employees to cross the river from Atchison east into Missouri to inspect railroad cars standing there, which is necessary because of a geographical situation. We think this paragraph should be amended to cite the Kansas statute and then include in your "geographical area" the railroad yard across from Atchison in Missouri.

Section A(7) of Article II says "If unofficial weighing services are performed by the Agency, the weight certificates issued shall not include the word "Official". You question whether the Federal Grain Inspection Service can forbid your department from using the word "official" on your weight certificates. As we read the U.S. Grain Standards Act, Section 5 and 6, the object is to require everyone to follow the "official grade designation" on inspection certificates, and certify to weight. We note that Section 5 gives the federal administrator authority to waive requirements in emergency or other circumstances which would not impair the objectives of this act. It seems that there is full opportunity to work out a mutually agreeable contract. Your inspection certificates ought to be "official" both state and federal, uniformly.

You further express concern with these sections of the proposed contract:

1. B(4). Maintain an "adequate staff" of qualified inspection personnel "in conformity the act, the regulations, and the instructions;"
2. D(5) Pay fees which you have not budgeted.
3. E(1) and (2). Pay salaries and costs which are not specified. You fear this might include a federal FGIS inspector and supervisor.
4. G(1) and (2). Conform to federal criteria for "analytical testing," and use only FGIS approved laboratories for analytical tests.
5. I(1) and (2). Implement ALL instructions, directives and procedures issued by the Administrator. You wonder if any of these (not yet prepared) conflict with Kansas laws.
6. J(2), (5), (7) and (10). Reports and Records. You question whether you should make different reports of activities

Donald D. Watson, Director
January 4, 1979
Page Three

performed and of receipts and disbursements than those reports which you must file with the Kansas Departments; that it is impossible to give a 90 day "advance notice" of a change in the Director by Governor appointment; or notify the federal office within 24 hours of receipt when you are not open Saturdays and Sundays.

7. Article III, Section (B)(1). This requires a "triennial" examination of licensed inspection personnel. You suggest that this is unnecessary, but such exams are part of FGIS responsibility.

8. Article IV, Section B. The FGIS wants to have the right to "recommend" the dismissal of agency personnel for noncompliance or violation of the Act, regulations or instructions. You say that the hiring and dismissing of any employee should be the responsibility of your Kansas Grain Inspection Department.

Kansas has a Civil Service Act, K.S.A. 75-2925 et seq. All employees or all state agencies, not specifically excepted from the law as "unclassified service", must be employed under this law, K.S.A. 75-2938 et seq. and dismissed as provided therein. K.S.A. 75-2949.

We understand that all grain inspection personnel are in fact classified, hired, salaried, and dismissed under this law. A wording must be worked into this contract that "Nothing in this contract shall conflict with the Kansas Civil Service Act K.S.A. 75-2925 et seq. nor with the Kansas Act creating the State Grain Inspection Department. K.S.A. 75-1701 et seq., nor pertaining to its operation. K.S.A. 34-101 et seq."

The contract should recognize that the agency, the Kansas State Grain Inspection Department, is a regularly constituted agency of the State of Kansas; that it is a "fee" agency and, while regulated by the legislature and the laws pertaining to state agencies, it must operate solely on the fees which it collects, not upon appropriations of the Kansas Legislature; that such fees are deposited with the Kansas State Treasurer in a special "grain inspection fee fund"; and that all expenditures from such fund, K.S.A. 34-228.

There is a procedure for handling payroll accounts. K.S.A. 75-5516. Your concern about federal personnel being paid out of the fee fund is unfounded, since only state employees only can be paid from such fund. K.S.A. 75-2951.

Donald D. Watson, Director
January 4, 1979
Page Four

With regard to the necessity of making additional and different reports to FGIS about employments, dismissals, salaries, receipts, disbursements, when you are already making these very reports to state officers, it would seem appropriate that FGIS should include a clause in its contract that a copy of reports containing required information, made under Kansas laws, when attached to FGIS forms, would suffice.

On the requirement of notice to FGIS of any complaint written "24 hours" of receipt, when this may be on a Saturday or Sunday, the words "of the next regular business day", could be added.

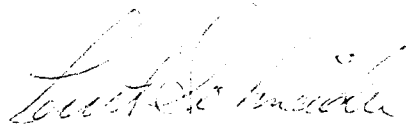
On the matter of "adequacy" of inspection personnel, if the qualifying criteria for inspection personnel do not meet federal standards, this Civil Service adjustment should be made.

On the question of FGIS approving Kansas analytical laboratories, maybe they would approve the ones you suggest?

Our general reaction is that you should make every effort to work out a mutually acceptable contract with FGIS. There is no way you can waive the Civil Service Act, the Acts creating your department, and the Kansas laws pertaining to the deposit and use of the Grain Inspection Fee Fund. But, short of that, it clearly appears that there is legislative authority and direction for you to co-operate with FGIS to work out procedures uniform in examining grain and grain warehouses.

If this cannot be done without conflicting with Kansas laws, then your only recourse is to ask delay in executing the contract until the matter can be presented to the 1979 legislature with request that they consider an amendment of the laws.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CJM: gw