



STATE OF KANSAS

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October 5, 1981

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ATTORNEY GENERAL OPINION NO. 81-217

Mr. Marvin R. Webb
Director, Grain Inspection Department
535 Kansas Avenue
Topeka, Kansas 66603

Re: Grain and Forage -- State Grain Inspection
Department; Advisory Commission -- Federal
Inspection Supervision Fee

Synopsis: Absent statutory authority the Kansas State Grain
Inspection Department may not charge additional
inspection fees to pay for federal supervision
fees imposed by 7 U.S.C.A. §79(j)(2). Cited
herein: K.S.A. 34-101, 34-103a, 7 U.S.C.A. §79.

* * *

Dear Mr. Webb:

You request our opinion regarding the authority of the Grain
Inspection Department to collect an additional inspection
fee in order to pay for federal supervision as imposed by
the recent amendment of 7 U.S.C.A. §79(j)(2). Your specific
question is as follows:

"Is the Kansas State Grain Inspection Depart-
ment within its legal rights to collect a user's
fee to be submitted to the Federal Grain In-
spection Service for their supervision? This
user's fee will be in addition to our fee charged
for services rendered. The amount of the user's
fee is in the process of being determined by the
United States Congress."

The federal fees have now been established and will be col-
lected against the Kansas Grain Inspection Department begin-
ning October 1, 1981. The Kansas State Grain Inspection

Marvin R. Webb
Page Two

Department is a state department created pursuant to K.S.A. 34-101 et seq. This department also functions as the designated state agency for official inspection of grain in the geographical area of Kansas for the purposes of 7 U.S.C.A. §79, which governs the official inspection of grain for the United States. Before the Kansas State Grain Inspection Department may make official inspections under the federal law, it must be designated as the official agency for the conduct of official inspections by the Administrator of the Federal Grain Inspection Service pursuant to 7 U.S.C.A. §79(f). The Kansas department has been so designated.

The cause for the proposed change in the charges of the Kansas Grain Inspection Department comes from the recent amendment of 7 U.S.C.A. §79(j)(2), which states as follows:

"Each designated official agency and each State agency to which authority has been delegated under subsection (e) of this section shall pay to the Administrator fees in such amount as the Administrator determines fair and reasonable and as will cover the estimated costs incurred by the Service relating to supervision of official agency personnel and supervision by service personnel of its field office personnel"

Previously, the federal government did not collect supervision fees from designated state inspection agencies.

Under the federal law the power to charge fees to private business for official inspections is provided in 7 U.S.C.A. §79(j)(1). However, this provision specifically exempts designated official and state agencies from the normal fee structure promulgated by the Administrator of the federal Grain Inspection Service for official inspections. Hence, if the designated state inspection agency is to collect inspection fees from the users of the inspection services in order to pay the federal supervision charges, state agencies must have a statutory grant of authority to charge such fees, a concept contemplated by the Congress as evidenced by 7 U.S.C.A. §79(f)(1)(v) which requires that designated official agencies of state or local government not charge unreasonable or discriminatory fees.

The Kansas State Grain Inspection Department is empowered by K.S.A. 34-103a to charge fees for official inspections. K.S.A. 34-103a states in pertinent part thus:

"Charges for services provided by the department shall be determined and set by the director with the approval of the state grain advisory commission and such charges shall be based on the cost of the services rendered. Such cost of services shall be determined by multiplying the average hourly wage paid to employees rendering such service times the number of man hours or fractions thereof required to perform said service, plus travel, subsistence and materials costs, if any. To the total of the foregoing shall be added thirty percent (30%) to cover the cost of department administrative expense, and deductions required by law to be deposited in the state general fund. Where any service is performed in a business community where the department does not regularly maintain an inspection station, the department may charge for subsistence and transportation of personnel and equipment from the headquarters of such personnel to such point and return. Such charges as may be set under this section shall be set by adoption of rules and regulations as provided by law. The director shall have the power to fix the manner in which the charges shall be collected." (Emphasis added.)

The allowable fee structure is thus very explicit, and regulations pertaining to fees must be made in accordance with this statute. No part of this fee structure allows for the collection of charges to pay federal supervisory fees.

It is a firmly established rule of statutory construction in Kansas that the powers of state agencies are limited to those expressly granted or clearly necessary to the effective exercise of those powers expressly granted. In this regard the Kansas Supreme Court stated in Murray v. State Board of Regents, 194 Kan 686, 689 (1965), as follows:

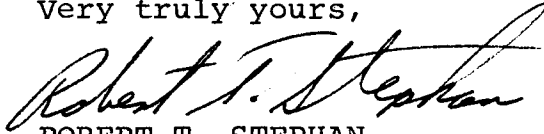
"Governmental agencies are creatures of the legislature, and can exercise only such powers as are expressly conferred by law and those necessary to make effective the powers expressly conferred. (State, ex rel., v. City of Kansas City, 181 Kan. 870, 317 P.2d 806; State, ex rel., v. City of Overland Park, 192 Kan. 654, 391 P.2d 128)."

Marvin R. Webb
Page Four

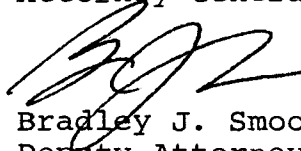
As the power of the Kansas Grain Inspection Department to make additional charges in order to pay the costs of federal supervision is not expressly granted and is not necessary to the effective exercise of its inspection responsibilities under Kansas law, it is our opinion that additional charges may not be imposed by the state department.

To summarize, it is our opinion that without statutory authority the Kansas State Grain Inspection Department may not make additional charges to users of inspection services in order to pass on the expense of federal supervisory fees.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:hle