

August 31, 1971

OPINION LETTER NO. 380
Answer by Letter-Klaffenbach

Mr. Dexter D. Davis
Commissioner of Agriculture
Post Office Box 630
Jefferson City, Missouri 65101



Dear Mr. Davis:

This letter is in response to your opinion request in which you ask whether it is legal and proper for the Commissioner of Agriculture to enter into the agreement entitled "AGREEMENT RELATING TO BRAND REGISTRY" with the Missouri Cattlemen's Association.

You further state that:

"The Missouri Legislature passed and the Governor has signed House Bill #134 a copy of which is attached and marked Exhibit "B". This Bill requires the Commissioner of Agriculture to register all cattle brands filed with the Department of Agriculture. The General Assembly [sic] did not appropriate any money to accomplish this task. The Missouri Cattlemen's Association would like to handle the brand registration as per the attached agreement (Exhibit A). They are willing to modify that agreement so as not to charge for this service until such time as appropriations may be secured from the Legislature."

We understand that House Substitute for House Bill No. 134 was signed by the Governor June 15, 1971, and will be effective September 28, 1971.

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The Bill referred to provides a comprehensive scheme for the registry of marks and brands of animals and repeals Chapter 268, RSMo 1969. We will refer to the Bill in pertinent part as it relates to the proposed agreement.

The preamble of the agreement recognizes the passage of said Bill and notes that it vests certain responsibilities and duties relating to the registration of livestock brands in the Missouri Department of Agriculture and declares that it would be of mutual benefit to the Department of Agriculture and the livestock industry to enter into an agreement with the Missouri Cattlemen's Association and their employees to register and record brands.

Notably the agreement provides among other things, that the Association agrees to perform duties delegated to it by the Department of Agriculture, maintain records and other materials, render accountings and pay funds received by it to the Department for deposit into general revenue, to furnish necessary office space, equipment, utilities and the like as well as personnel to administer the brand registry program and to publish a brand registration book and supplements.

Some of the provisions of the agreement appear to lack clarity such as the provision requiring the Association to protect the ownership of all brands currently and hereafter registered and, as we have indicated previously, the provision relating to the delegation of unspecified duties.

The new brand registry laws vest certain definite functions and duties in the Commissioner of the Department of Agriculture. That is, under Section 4, the Commissioner accepts brand applications with the filing fees and makes the determination as to whether the brands are of record or conflict with other brands and has the duty to file brands pending examination. That section specifically states that the power of examination, approval, acceptance or rejection shall be vested in the Commissioner, subject to the provisions of Chapter 536, RSMo. Under Section 6, the Commissioner is required to furnish the owner of recorded brands certified copies of the record of the brand. Under Section 10, instruments of writing evidencing the sale, assignment or transfer of the brand are required to be recorded by the Commissioner and under Section 11, the Commissioner must furnish a new owner certified copies evidencing such transactions.

Under Section 12, such certified copies are prima facie evidence of the ownership of the animal. Under Section 13, it is the duty of the Commissioner to cause to be published in book form a list of all brands on record at the time of publication. The Commissioner further has the duty under that section to distribute copies of the brand book and supplements to the county recorder of deeds of each county and to each licensed livestock market and slaughter plant in the state.

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Section 14 requires that the Commissioner deposit the fees collected under the act in the general revenue.

Without going into all the provisions of the act, it is clear that the entire administration of the act is vested in the Commissioner and it is his duty to file, record and make other determinations with respect to brands.

As we have noted the agreement does not clearly specify which duties will be delegated to the Missouri Cattlemen's Association. It appears however, that the agreement is an attempt to delegate the major portion of the execution and responsibility of the laws relating to brand registry to a private organization even though the Department of Agriculture maintains a certain amount of control. Assuming that the delegation of authority will likely correspond with the intentions of the parties upon entering into this agreement, we are of the view that the result is to purport to give the private association many of the powers and duties the legislature specifically vested in the Commissioner. Accordingly, we believe that the agreement is an improper attempt to place sovereign functions, notwithstanding controls, in the private organization.

The Supreme Court of Missouri held that, in the area of the exercise of an officer's authority, an officer to whom a discretion is entrusted cannot delegate the exercise of that discretion although he may under proper circumstances delegate the performance of a ministerial act. State ex rel. Skrainka Const. Co. v. Reber, 226 Mo. 229, 126 S.W. 397 (1910). In this respect the Court has also noted that an act which an officer may do or may not do in the exercise of his official discretion cannot be considered a ministerial action. State ex inf. Gentry v. Toliver, 315 Mo. 737, 287 S.W. 312 (1926).

It is clear that these laws are expressly designed for the protection of the public and the agreement as such which contemplates unspecified delegation of duties, the maintenance of public records and the collection and handling of public funds by a private organization is contrary to the law and to accepted standards of public administration.

Very truly yours,

JOHN C. DANFORTH
Attorney General