

DEPARTMENT OF AGRICULTURE: Employees entitled to what salary?

✓ Dec 12 395 Laws 33  
✓ HB 649 Dec 4 Laws 33

11-3

November 1, 1933

FILED  
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Mr. J. C. Breshears  
Commissioner of Agriculture  
Jefferson City, Missouri

Dear Sir:

Your request for an opinion dated August 31, 1933,  
was as follows:

"Enclosed is a letter from former Dairy  
Commissioner E. G. Bennett, accompanied  
by a claim of salary and expenses for  
services rendered after July 23rd, 1933.

Does the State Department owe this, and  
if so, from what parts of what appropria-  
tion?"

The letter which you inclosed from Mr. E. G. Bennett  
reads as follows:

"I am herewith handing you statement of  
amount for my time in awaiting the appoint-  
ment of my successor, and expenses in tak-  
ing care of State business as suggested  
by Governor Harris.

My expenses, while in Jefferson City during  
this period, as you will note, are not  
included.

You will, also, find enclosed application  
for cream buyers license from Mr. Homer  
Owen Auxvasse, Mo. with remittance of \$2.00  
in currency."

The claim for salary and expenses which you inclosed  
is as follows:

"THE STATE OF MISSOURI,  
to E. G. Bennett, Dr.  
To salary as Dairy Commissioner for the  
month ending the 24th day of July to  
August 10, 1933 at \$2,500 per annum - -  
\$120.96, payable out of; ( salary for time  
spent in office waiting for commissioner  
of Agriculture to take over office.)  
Appropriation."

To this voucher was attached a monthly expense account  
signed by Mr. Bennett for a trip from

"Jefferson City, to Columbia, to Spring-  
field, to Lebanon, and back to Jefferson  
City, which started on July 26 and ended  
on July 31, and which included his meals,  
lodging and traveling expenses at five  
cents per mile, in the total amount of  
\$28.90."

It will be noted that the voucher which he presented for  
salary is for a salary as Dairy Commissioner, while the Laws of  
1933, at page 171 abolished said office for the terms of said  
account, provide as follows:

"\* \* The intention of this act is to  
abolish the state bureau of dairying  
and the office of State Dairy Commis-  
sioner, and his assistants, and to  
transfer their duties to the Commis-  
sioner of Agriculture, and his assist-  
ants."

As Dairy Commissioner for the period of time claimed, Mr.  
Bennett is entitled to nothing as the above act was approved on  
March 22, 1933, without an emergency clause, and by virtue of the  
law became effective July 24, 1933, on which date the office of  
Dairy Commissioner with all of the emoluments of said office, ceased  
to exist.

It will be noted that in Mr. Bennett's letter he states  
that Governor Harris suggested that he stay in the office of the  
Commissioner of Agriculture until the appointment of his successor.

If this be a fact then Governor Harris must have appointed  
him as an assistant in your office for the determinate period which

he is claiming for, and it may be that Governor Harris stipulated with him the salary which he was to receive during that period. If such be the case he was functioning not in the office as Dairy Commissioner but as an assistant in the State Department of Agriculture and would be entitled to a reasonable amount for his services or the contractual amount that Governor Harris agreed to pay him.

His expense account during that period of time if he was regularly employed, should be considered and approved as the expense account of any other assistant is considered and approved in your Department. On the other hand, if he was not employed by Governor Harris and merely stayed around the office after his office expired for no good reason at all, he is entitled to nothing for salary and nothing for expenses.

The Laws of 1933, page 65, Section 4, provide as follows:

"There is hereby appropriated out of the state treasury, chargeable to the state revenue fund, the sum of Five thousand eight hundred thirty-three dollars and thirty-one cents (\$5,833.31), to pay the salaries, wages and per diem of the officers and employees and other expenses of the bureau of dairying of the state board of agriculture, for the period beginning January 1, 1933, and ending not later than July 31, 1933, as follows:

A. Personal service:	
For salaries of state dairy commissioner and other necessary employees. . . . .	\$3,983.31
D. Operation:	
General expense, including communication, printing and binding, transportation of things, travel, stationery, office supplies and other general expenses. . . . .	<u>1,850.00</u>
Total bureau of dairying, out of revenue. . . . .	\$5,833.31 "

Mr. J. C. Breshears

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If you determine that he was regularly employed then his salary should have been deducted from the \$3,983.31 appropriation for salaries above set out and his expenses should be deducted from the \$1,850.00 appropriation above set out.

If Governor Harris appointed him as he claims but with no stipulation as to salary, then he would be entitled to a reasonable amount for his services and what is a reasonable amount would have to be determined by the Commissioner of Agriculture after considering the value of the services which he rendered during this period of time.

Respectfully submitted,

Wm. ORR SAWYERS  
Assistant Attorney General,

APPROVED:

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ROY McKITTRICK  
Attorney General.

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