

WEIGHTS AND MEASURES. Right of county court to appoint scale inspector.

11-2

October 25, 1934.

Hon. John A. Eversole,
Prosecuting Attorney, Washington County,
Potosi, Missouri.



Dear Sir:

A request for an opinion has been received from you under date of October 15th, 1934, such request being in the following terms:

"I have been requested by the county court of this county to find out what authority if any they have to appoint a scale inspector for this county. It seems that there are several pair of public scales around here which are used for weighing tiff and other minerals mined which have not been repaired for years and which are strongly suspected of being incorrect because of neglect."

I. No statute has been discovered creating or authorizing a county court to create the office of county scale or weights and measures inspector, and in the absence of such a statute a county court could not create such an office and appoint someone to fill it because county courts have only the powers which are expressly or impliedly conferred on them by statute.

"A county court possesses no powers except those conferred by statute, and, no statute having conferred the power it undertook to assume in the instant case, its action therein, * * * is void." (State ex rel, and to Use of Broughton v. Oliver, 202 Mo. App. 527, 208 S. W. 112, 115 (1919)).

II. If the scales are mine scales and if your problem is only concerned with coal, your question might be answered by R. S. Missouri, 1929, Section 13619, which provides in part as follows:

"The coal mine inspector of this state shall be ex officio inspector of weights, measures

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"and scales used at coal mines, and he is hereby empowered and it shall be his duty to test the scales used to weigh coal mined in the mines of this state at least every six months, to ascertain whether or not such scales correctly measure the weight of such coal."

III. If the situation dealt with in your letter is broader than the provisions of such Section 13619, the only remaining method of dealing with such situation would seem to be by action by municipalities which would, of course, only cover scales within the corporate limits of such municipalities.

A. A state has the power to regulate weights and measures, to appoint inspectors of weighing devices and in general to enact any necessary provisions to enforce the honesty and correctness of such system.

"That the inspection and regulation of weights and measures are within the police power of the States, and laws passed by the Legislature for such inspection and regulation requiring dealers and traders to conform thereto, and for the appointment or election of officers or inspectors thereunder, are in the nature of police regulation and not repugnant to the Constitution of the United States or of this State can no longer be doubted."
(Ex parte House v. Hayes, 227 Mo. 617, 636, 127 S.W. 305 (1910) affirmed 219 U. S. 270 (1911)).

Such power can be delegated by the State to cities therein.

"As a police regulation, for the purpose of protecting the public and consumers from fraud and imposition in their purchase of commodities, it is recognized by the courts that the legislative authority has the right to regulate weights and measures and delegate that authority to municipal corporations so that the latter, in so far as they exercise police powers, may regulate weights and measures."
(Stegmann v. Wecke, 279 Mo. 140, 146, 214 S.W. 127 (1919)).

B. Where such power is expressly delegated by the state to a city the city can, of course, appoint a scale inspector.

Sylvester Coal Co. v. City of St. Louis,
130 Mo. 323, 32 S. W. 849 (1895);

City of St. Charles v. Elsner,
155 Mo. 671, 53 S. W. 291 (1900)
(City of the third class).

C. Even if such power is not expressly delegated to a city, it will be implied from other powers as is demonstrated by the case of City of Lamar v. Waldman, 57 Mo. App. 507 (1894). The court stated the facts on page 510 as follows:

"The city of Lamar is a city of the fourth class. The statute provides that cities of the fourth class have 'power, by ordinance, to establish and regulate markets; and to pass such other ordinances for the regulation and police of said city, and commons thereto appertaining, as they shall deem necessary; and to pass such ordinances not inconsistent with its provisions, as may be expedient in maintaining the peace and good government, health and welfare, of the city, its trade, commerce and manufactories, and to enforce the same by fine and penalties and forfeitures, not exceeding \$100. R. S. sec. 1589. The city passed an ordinance providing for the weighing of hay, coal and other articles and defining the duties of city weigher."

The court held the ordinance valid except as to a provision irrelevant to the present inquiry and said in the course of its opinion:

"The statute, already quoted, conferred upon the city ample power to 'regulate markets' by ordinance. Without the special grant we think the general welfare clause conferred all the power needed for that purpose.

Ordinances regulating markets have been sustained as being reasonable and conducive to health and good government of municipalities. The power to pass an ordinance regulating weights is incident to and part of the grant to 'regulate markets.' It is therefore strictly a police power. It is exercised for the purpose of affording protection to the inhabitants of a city against false and fraudulent weights in the sale and exchange of commodities."

From the ruling in this case it would seem that at this time a court would hold that such a power should be implied to a city of the fourth class such as Potosi to appoint a scale inspector under R.S. Missouri, 1929, Section 7618, which provides as follows:

"The mayor and board of aldermen of each city governed by this article shall have the care, management and control of the city and its finances, and shall have power to enact and ordain any and all ordinances not repugnant to the Constitution and laws of this state, and such as they shall deem expedient for the good government of the city, the preservation of peace and good order, the benefit of trade and commerce and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect, and to alter, modify or repeal the same."

IV. If the above courses of action should not be adequate and available, a further method might be invoked through the statutes imposing penalties and forfeitures on sellers who do not give correct weight or on persons keeping scales who knowingly do not weigh certain things correctly on such scales. We refer you to the following statutes:

"Any person who shall knowingly keep any measure or weights, and buy or sell any commodity whatsoever by such weights or measures as shall not correspond with the weights and measures deposited in the clerk's office, shall, for every such offense, forfeit and pay to the party injured ten dollars, to be recovered by civil action before any justice of the peace of the county." (R.S.No.1922, Sec. 14484)

"Any person or persons who keep any public or private scales, and weigh for themselves or others, mineral, lead, zinc, coal and other ores, who knowingly take more than ten hundred pounds for one thousand or more than twenty hundred pounds avoirdupois for one ton, or fail to correctly balance his or their scales before weighing, or shall fail or neglect to account for each fractional part of a thousand or ton, as the case may be, in weighing any of the ores herein named, which ores are bought and sold by the thousand or ton, shall, for every such offense, forfeit and pay to the party injured a sum not less than twenty dollars nor more than fifty dollars, to be recovered by civil action before any justice of the peace in the county." (R.S.No.1922, Sec.14490)

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In conclusion, it is our opinion that a county court would have no authority to appoint a scale inspector for the county.

Very truly yours,

EDWARD H. MITLER
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General