

State Warehouse Commissioner:

Commissioner can, in his discretion, appoint an employee of a mill as a state weighmaster for said mill, providing said weighmaster is properly bonded for appointment.



June 9, 1934.

Mr. J. B. Hopper,
State Warehouse Commissioner,
317-326 Board of Trade Building,
Kansas City, Missouri.

Dear Mr. Hopper:-

We have your letter of May 19, 1934, in which was contained a request for an opinion as follows:

"Representatives of the milling industry of Springfield, Missouri, have requested consideration be given to a plan of theirs whereby they can be furnished official state weights on grain moving into and out of their mills, none of which are at present licensed and bonded under the State Warehouse Act.

"For the past twelve years and until discontinued by this Department, grain arriving at these mills was weighed by their own employees but not under the supervision of State Weighers. The weights thus obtained were given to the State Grain Inspector located there who on this information issued an official state weight certificate, collecting a fee of \$1.00 per car. This arrangement as far as can be learned, was satisfactory to all concerned but in our opinion did not meet the requirements necessary to make a state weight certificate of proper value, nor relieve the Department of embarrassing criticism in the case of a controversy where our employee would be asked if he had actually weighed or supervised the weighing. For these reasons we discontinued this practice, although knowing of no complaint and being assured of the honest intentions of all concerned.

"The plan submitted by them contemplates the bonding of an employee of each mill under a \$5,000.00 surety bond, the employee to be paid by the State, who would in turn bill on the milling company for the expenses of salary and overhead. This employee would weigh all grain received or shipped, and from his results our Department would issue an official state weight certificate for which a fee would be collected. When this employee is not weighing, he would be used by the mill in whatever capacity they desire.

"This arrangement would enable the milling company to have an official weight certificate for settlement and involve no additional cost except the payment for the bond, because they at all times are compelled to retain one of their employees as a weigher, also using him in other capacities. The revenue accruing to the State would help the mills meet their guarantee for our inspection service since it is maintained on a self-sustaining basis, and the weighing revenue would be applied to the inspection expenses.

"Although this Department is greatly concerned in meeting the requirements of the business interests with which it is associated, still we feel such a decided departure from customary procedure should first have your consideration and opinion for legality."

Section 13360, Revised Statutes of Missouri, 1929, provides in part as follows:

"Sec. 13360. To make rules and regulations--chief inspector, deputy and assistants to be governed by same--fees to be paid--where.--The chief inspector of grain, the deputy chief inspector, assistant inspectors and other employes in connection therewith, shall be governed in their respective duties by such rules and regulations as may be prescribed by the commissioner, and the said commissioner shall have full power to make all proper rules and regulations for the inspection of grain, not inconsistent with this article, to include the fixing of charges for the inspection of grain and other duties of said chief inspector, deputy chief inspector and assistant inspectors and samplers and to make rules for the collection of same, which charges shall be regulated in such manner as will, in the judgment of commissioner produce sufficient revenue to meet the necessary expenses of the service of inspection and no more. All fees collected shall be turned into the state treasury, and all fees so turned into the state treasury from the inspection and weighing of grain are hereby re-appropriated to the warehouse commissioner for the purpose of paying all salaries and expenses necessary for inspecting and weighing grain, and paying all other expenses incurred in the administration of the department."

Section 13377, Revised Statutes of Missouri, 1929, provides in part as follows:

"Sec. 13377. Commissioner to appoint weighmasters--duties of.--The commissioner shall appoint suitable persons to act as weighmasters at such places in this state where state grain inspection and weighing may be established in conformity with the provisions of this article; said weigh-

masters shall at the places aforesaid, supervise the weighing of all grain which may be subject to inspection and weighing, etc."

Section 13381, Revised Statutes of Missouri, 1929, provides in part as follows:

"Sec. 13381. Weight certificates are not to be issued except by bonded state weigher--false or untrue certificates given out--penalties.--It shall be unlawful for any person, corporation or association other than a duly authorized and bonded state weigher to issue any weight certificate or to issue or sign any paper or ticket purporting to be the weight of any car, wagon, sack or other package of grain weighed at any warehouse or elevator in this state where duly appointed and qualified state weighers are stationed and in control of the scales under the provisions of this article, or to make any charge for such weighing, or purported weighing, or weight certificates, or tickets, or purported weight certificates or tickets. And any person, corporation or officer, agent or servant of such corporation who shall do any of the acts declared by this section to be unlawful, shall be deemed guilty of a misdemeanor, etc."

Section 13382, Revised Statutes of Missouri, 1929, provides in part as follows:

"Sec. 13382. Weighmasters--bond of--compensation.--The weighmasters provided for in this article shall each give a bond in the sum of five thousand dollars, conditioned for the faithful discharge of their duties and shall receive such compensation as the commissioner shall determine."

All of the sections above quoted are contained in Article 1, Chapter 98, Revised Statutes of Missouri, 1929, said chapter being entitled "Inspections" and said article being entitled "Inspection of Grain." In other words, said article sets forth the law of this state relating to the inspection and weighing of grain by state authorities.

A reading of section 13360 above quoted shows that the commissioner is given a general discretionary power in the management and administration of his department. The use of the word "suitable" as applied to weighmasters appointed by said commissioner (see Section 13377 above quoted) therefore means that said commissioner may appoint any person as weighmaster if that person is, in said commissioner's opinion, a person suitable for the position.

Mr. J. B. Hopper

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June 9, 1934.

In our opinion, therefore, if the commissioner desires to appoint one of the employees of a certain mill to the position of state weighmaster, and the bond provisions of Section 13382 above quoted are complied with, we can see no objection to such procedure. In order, however, to satisfy Section 13381 above quoted the employee referred to in your letter would have to be duly appointed and authorized as a state weighmaster. The employee who had been appointed to the position of weighmaster might in his spare time have and perform other duties in the mill in his capacity as mere employee. The provision in Section 13381 prohibiting any employee of a mill from performing any of the acts declared therein to be unlawful would, in our opinion, not apply in this case because when the weighing duties were being performed by said employee he would, in a legal sense, be a different person or at least acting in a different capacity, i.e. the capacity of a duly appointed and authorized weighmaster.

Since we see nothing in the article above referred to that would militate against the procedure suggested in your letter, we feel that in a legal sense such procedure would be permissible. We leave the matter of the advisability or workability of such a practice to the discretion of your Department and to you.

Very truly yours,

CHAS. M. HOWELL, Jr.
Assistant Attorney General

CMHJr:LC

Approved:

Attorney General