

LABOR AND INDUSTRIAL INSPECTION: Commissioner has authority to inspect all restaurants and charge a fee for such inspection.

February 21, 1935.



Mr. Otis K. Jones
Director of The Board
St. Louis Restaurant Assoc. Inc.
5540 Pershing Avenue
St. Louis, Missouri

Dear Sir:

This is to acknowledge receipt of your letter, requesting an opinion from this office, which reads as follows:

"As Chairman of the Legislative Committee of the St. Louis Restaurant Assoc. and in behalf of some of the small restaurant owners with three and four employees who are members of our Assoc. have requested that our Committee gather some information as to duties of the Missouri Industrial and Labor Inspection Bureau.

"We have shown a copy of the law to some of these members and they feel it is an unjust imposition on them by the State and I have had one incident where a restaurant owner with three employees brought this matter before our Board of Directors and as I recall it is to be voted upon soon to test the law in a test case.

" Mr. McKittrick as Chairman of the Legislative Committee I ask you to please show us the Courtesy of a reply and you can rest assured it will be appreciated by this organization.

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We trust you appreciate the fact that this office in giving an opinion must be guided strictly by the law and cannot pass on the fairness or unfairness of its application.

Section 12318, R. S. Mo. 1929, makes it the duty of the Commissioner of Labor and Industrial Inspection, his assistants or deputy inspectors, to make not less than two inspections each year of the various places of business including restaurants, said section reads as follows:

"The state commissioner of labor and industrial inspection may divide the state into districts, assign one or more deputy inspectors to each district, and may, at his discretion, change or transfer them from one district to another. It shall be the duty of the commissioner, his assistants or deputy inspectors, to make not less than two inspections during each year of all factories, warehouses, office buildings, freight depots, machine shops, garages, laundries, tenement workshops, bake shops, restaurants, bowling alleys, pool halls, theatres, concert halls, moving picture houses, or places of public amusement, and all other manufacturing, mechanical and mercantile establishments and workshops.

The last inspection shall be completed on or before the first day of October of each year, and the commissioner shall enforce all laws relating to the inspection of the establishments enumerated heretofore in this section, and prosecute all persons for violating the same. Any municipal ordinance relating to said establishments or their inspection shall be enforced by the commissioner. The commissioner, his assistants and deputy inspectors, may administer oaths and take affidavits in matters concerning the enforcement of the various inspection laws, relating to these establishments: Provided, that the provision of this section shall not apply to mercantile establishments that employ less than ten persons that are located in towns and cities that have three thousand inhabitants or less."

Under the provisions of Section 13219, R. S. Mo. 1929, the commissioner is entitled to demand and receive certain fees for making said inspections. Section 13219, supra, reads in part as follows:

"The commissioner provided for in this article shall be entitled to demand and receive from the owner, superintendent, manager or other person in charge of every establishment inspected, as provided for by law, the following fee for each inspection made in accordance with the provisions of articles 4, 5, 6, 8, 9 and 10, chapter 95, R. S. 1929, or elsewhere authorized or required of said inspector by law to be made: For the inspection of every building or shop in which three or less persons are employed or found at work, the sum of fifty cents; for the inspection of every building or shop in which more than three and not exceeding thirteen persons are employed, the sum of one dollar; for the inspection of every building or shop in which more than thirteen and not exceeding twenty-six persons are employed, the sum of two dollars; for the inspection of every building or shop in which more than twenty-six and less than fifty persons are employed, the sum of three dol-

lars; for the inspection of every building or shop in which more than fifty persons and less than eighty persons are employed, the sum of four dollars; and in every building or shop in which more than eighty persons are employed an additional fee of one dollar shall be charged and collected for every fifty additional persons employed, or any additional fraction thereof; and the fee herein provided for shall be due immediately upon completion of the inspection. *****

Formerly, this State had a factory inspection law which was similar to the present inspection law in question. The constitutionality of the factory inspection law was passed upon in the case of State v. Vickers, 186 Mo. 103. In that case, Judge Gantt, speaking for the Court, at pages 105 to 107 inclusive said:

"By said act it is provided the Governor shall appoint a State factory inspector, who was authorized to appoint from time to time seven assistants and to divide the State into districts and assign one inspector to each district and each inspector was required to make two inspections each year of all factories, and for each inspection such inspector was required to collect one dollar as an inspection fee, and all such fees were required to be paid into the State treasury. The failure to pay the fee for the inspection made May 6, 1902, is the ground of this prosecution. The information, though somewhat inartistically drawn, follows the statute, and is sufficient.

"The objections to the law are that it 'violates sections 3 and 4 of article 10 of the Missouri Constitution, in that it imposes a burden of taxation for the maintaining of the inspection department upon one class of citizens, and discriminates against said class.

"Second. That they provide for the taking of money and liberty from manufacturers without due process of law, and deny to them the equal protection of the laws.

"Third. That they vest judicial powers

in the factory inspector.

"Fourth. That they are a delegation of legislative power to the factory inspector.

"Fifth. That they discriminate against city manufacturers, and place greater burdens upon them than upon country manufacturers.

"Sixth. That they are in violation of the fourteenth amendment to the Constitution of the United States, in that they deprive defendant of his liberty without due process of law and deny him the equal protection of the law."

"The first, second and sixth objections to the law may be grouped under one head. The answer to each and all of them is that this is a police regulation for the protection of the lives, health and morals of the employees in factories, and is clearly within the power of the Legislature to enact. Such being the obvious purpose and scope of the enactment, there can be no doubt of its constitutionality and validity, so far as these objections to it go. (State v. Whitaker, 160 Mo.59; State v. Layton, 160 Mo. 474.)

"II. The third and fourth objections to the act, to-wit, that the act vests judicial and legislative powers in the factory inspector, are clearly without merit. The act provides for the appointment of the inspectors and makes it their duty to inspect all factories and requires them to give the proprietors a certificate of the result of such inspection.

"Their duties are ministerial, involving only that discretion which every ministerial officer must exercise in the discharge of his duties, and are in no sense judicial or legislative as those terms are understood in our system of laws.

"III. The fifth assignment is equally ground-

less. There is no discrimination in the act between the burdens imposed upon manufacturers in cities not imposed upon those in the country. By its terms it applies to all factories in the State without exception or distinction. (State v. Thomas, 138 Mo. 100; State v. Thompson, 160 Mo. 333; State ex inf. v. Washburn, 167 Mo. 680.)

"IV. As a police regulation the State has the unquestioned right to exact and demand an inspection fee for the inspection and certificate of inspection required by the act. It has never been ruled that an inspection fee pure and simple is a tax upon property. (Cooley on Taxation, 586; State ex rel. v. Hudson, 78 Mo. 302; St. Charles v. Elsner, 155 Mo. 671; Patapsco Guano Co. v. Board of Agriculture, 171 U. S. 345; Willis v. Standard Oil Co., 50 Minn. 390.)

"The inspection fee of one dollar for the inspection and certificate is so manifestly reasonable that it is clear that it is not objectionable on that ground.

"The very mention of an inspection law suggests the exercise of police power by the State and the requirement that the persons or things inspected shall pay for it. The fact that the manufacturers are required to pay the inspection fee provided by this act in no manner infringes any constitutional right of the defendant. The court of criminal correction committed no error in so holding, and its judgment is affirmed."

We are therefore of the opinion that the commissioner of labor and industrial inspection has the legal right to inspect all restaurants and to charge for such inspections, the fees specified in Section 13219, supra.

Yours very truly,

APPROVED:

James L. HornBostel,
Assistant Attorney-General.

ROY McKITTRICK
Attorney-General.

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