

INSPECTION OF GRAIN: Form used by firm for inspection for its own convenience and not impersonating Grain Inspection & Weighing Department, not violation of Sec. 13362, R.S. Mo. 1929.

October 12, 1936. 10-16



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

Dear Sir:

This department is in receipt of your letter inquiring as to the possible criminal liability of certain grain inspections. Your letter is as follows:

"This Department maintains at Sikeston, Missouri an established inspection point in charge of a government licensed grain inspector, who is an employee of this Department.

"We find, however, that the Scott County Milling Company of Oran, Missouri has an inspector who is grading grain for the farmers of that vicinity and using as a certificate the form enclosed herewith. This is not in conflict with the regulations of the United States Grain Standards Act; however, we would like to have an opinion as to whether it is a conflict with Section 13362 of the Missouri Statutes governing inspection and weighing of grain.

The inspection certificate being issued at Oran, Missouri, and our inspector being established at Sikeston, Missouri, may make of no effect Section 13362 of our State Law. However, we believe that similar services are being performed by this same man at Sikeston, Missouri, although we have at that particular point an established inspector, and if this is the case and possible of proof, would it be a violation of Section 13362?"

The Supreme Court of Missouri has never passed on Section 13362, R.S. Mo. 1929, which provides:

"The inspection or grading of grain in this state, whether into or out of warehouses, elevators, or in cars, barges, wagons or sacks arriving at or shipped from points where state grain inspection is established, must be performed by such persons as may be duly appointed by the commissioner, sworn and have given bond under this article, and any person or persons who shall assume to act as an inspector of grain who has not been duly appointed by the commissioner, sworn and given bond under this article, shall be held to be an imposter, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail, and if in the City of St. Louis, in the city jail of said city, for not less than three months nor more than six months, or both such fine and imprisonment, at the discretion of the court, for every such offense so committed,"

nor have any prosecutions reached the Supreme Court which might be a guide to the interpretation of said section. Therefore, it devolves upon us to glean from the section such interpretation as was in the mind of the Legislature at the time the section was passed.

The first element is that the inspection must be made where State grain inspection is established; the second is that it must be performed by a duly authorized and appointed deputy commissioner and inspector; and third, as the statute denominates a person who attempts to inspect to be an imposter, said imposter must claim to be a duly appointed agent and assume to carry out the duties as imposed by the statutes relating to the inspection of grain--in other words, he must be holding himself out as an appointee of the Grain Inspection and Weighing Department of the State of Missouri.

The enclosed form entitled "Inspection Department - The Scott County Milling Company, Oran, Missouri" appears to be a form used in connection with a service which this company is rendering to customers. You will note in the lower left hand corner thereof the words "For office settlement only." Of course, the facts in each instance would govern largely and the question of criminal intent would also be involved.

We do not know, and we presume your department has not a complete report, as to whether or not the person in question is representing himself to be an employee of the Grain Inspection and Weighing Department of the State or Missouri or of the Federal Government, or in other words what his statements and actions are as they might bear on the question of criminal intent--that of being an imposter.

From the facts as presented by you, it is the opinion of this department that the action of the Scott County Milling Company in having an inspector grade grain for the farmers of that vicinity does not constitute a violation of Section 13362, R.S. Mo. 1929 as contemplated by that section; however, if there are any further facts or acts on the part of the person in question, which you desire to submit, please feel free to write us further.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General

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