

AGRICULTURE - Fees under Section 12635, R. S. Mo. 1929, to be deposited in the State Treasury; no authority to pay U. S. Department of Agriculture any part of said fees.

August 5, 1937

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Honorable Jewell Mayes, Commissioner
Department of Agriculture
Jefferson City, Missouri



Dear Sir:

We have your request of August 5, 1937, for an opinion as follows:

"1. Does the Commissioner of Agriculture have authority to comply with the non-deposit provision of Section 12635, Revised Statutes of Missouri, 1929, in view of the General Fee Statute of 1933 on page 415 of the Laws of 1933?"

2. If your opinion on Question 1 is NO, then does the Commissioner of Agriculture have authority to enter into an agreement with the United States Department of Agriculture, which will provide that the Federal Department be paid half the profits on hand at the termination of the agreement, or prior to the end of each biannual period?"

We shall treat these questions separately.

I.

The Commissioner of Agriculture has authority to carry out provisions of Section 12635, R. S. Missouri, 1929, except those relating to the disbursement of fees.

The legislature in 1933, (Laws of 1933, page 415), passed the following statute:

"All fees, funds and moneys, from whatsoever source received by any department, board, bureau, commission, institution, official or agency of the state government by virtue of any law or rule or regulation made in accordance with any law, shall, by the official authorized to receive same, and at stated intervals, be placed in the state treasury to the credit of the particular purpose or fund for which collected, and shall be subject to appropriation by the General Assembly for the particular purpose or fund for which collected during the biennium in which collected and appropriated. The unexpended balance remaining in all such funds (except such unexpended balance as may remain in any fund authorized, collected and expended by virtue of the provisions of the Constitution of this State), shall at the end of the biennium and after all warrants on same have been discharged and the appropriation thereof has lapsed, be transferred and placed to the credit of the ordinary revenue fund of the state by the state treasurer. Any official or other person who shall willfully fail to comply with any of the provisions of this section, and any person who shall wilfully violate any provision hereof, shall be deemed guilty of a misdemeanor;"

In an opinion written by this office relative to the effective date of the above statute, which opinion was written by Harry G. Waltner, Jr., Assistant Attorney General, under date of September 1, 1933, it was held as an opinion of this office:

"It is our further opinion, that all fees collected subsequent to July 24, 1933, should be kept in a separate fund by you and paid into the credit of the Board at stated intervals."

We adopt and reaffirm the holding of that opinion to the effect that all fees, including such fees as authorized by Section 12635, R. S. Missouri, 1929, must be paid into the State Treasury by the Commissioner of Agriculture, in order to comply fully with the terms of the 1933 Law, supra. In addition thereto, the 1935 legislature, blackest law of 1935, page 189, enacted Section 12355-a, which reads as follows:

"All moneys collected by or through the Commissioner of Agriculture of the State Department of Agriculture from fees, licenses, permits or other earnings under any law, other than the business of the Missouri State Fair, shall be deposited daily in the state treasury to the credit of the "Agricultural Fees Fund," which shall be subject to appropriation by the General Assembly."

It is therefore, the opinion of this office that all fees collected by the Department of Agriculture must be deposited in the state treasury to the credit of the "Agricultural Fees Fund".

II.

The Commissioner of Agriculture has no authority to enter into an agreement with the U. S. Department of Agriculture to divide the profits, if any, resulting from shipping point inspection fees.

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We have heretofore pointed out how all fees collected by the Commissioner of Agriculture are deposited in the state treasury.

These fees having been placed in the state treasury, automatically become subject to the constitutional provisions of this state. Article 10, Section 19, of the Missouri Constitution, provides:

"No money shall ever be paid out of the treasury of this state, or any of the funds under its management, except in pursuance of an appropriation by law."

It is within the realm of possibilities that the next legislature could appropriate to the U. S. Department of Agriculture, one-half of such profits, if any, as may be accumulated from shipping point inspection fees, but this is purely a legislative matter and rests in the discretion of the legislature.

It is therefore, the opinion of the office that the Commissioner of Agriculture has no authority to disburse any fees collected under Section 12635, R. S. Missouri, 1929, and has no authority to pay or agree to pay any portion of said fees to the U. S. Department of Agriculture.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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