

Officers: Committee appointed by the Governor to supervise mixing and distribution of poison bait for insects are not officers or agents of the state and hence not immune from liability for tort.

July 19, 1938

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Hon. Chas. D. Brandom
Prosecuting Attorney
Daviness County
Gallatin, Missouri



Dear Sir:

This will acknowledge receipt of your inquiry of June 18, 1938, which reads as follows:

"The question has arisen in this county in connection with the mixing of poison bait for grasshopper and army worm control as to the liability of the persons in charge with reference to any one working with the poison compound who might become injured or poisoned and as to how the matter should be handled to avoid such liability on the part of the committee of persons in charge.

"It seems that Governor Stark has appointed fifteen men of this county as a committee in charge and the work is all done under their instructions. Is their appointment by Governor Stark such that they would be considered agents of or a part of the Government and if so would they be personally liable for any injuries in connection with the matter?

"It seems that some of the counties have been contemplating incorporating under the Nonprofit Cooperative Association Statutes (Section 12676 and following R.S. Mo. 1929) in order to relieve any personal liability on any of the members in charge. But the question arises as to whether the poisoning of the grasshoppers and army worms would be within the powers granted such an association under the statute which article of the statute seems to deal more with the matter of marketing farm products. If incorporated as suggested, it would seem that any protection (if any) the members of the committee so appointed by the Governor might have by reason of government connection would be eliminated and their sole protection from liability would depend upon the corporation.

"I would like to have your opinion:

"1st. As to whether or not this committee is protected in any way from personal liability by reason of their appointment by Governor Stark.

"2nd. Would incorporation under Article 24, chapter 87, R.S. Mo. 1929 protect said committee members (which necessarily involves the question as to whether such grasshopper control comes within the statutes).

"3rd. Your suggestion as to how the matter should be handled for the protection of those in charge.

"4th. Would they be subject to the Social Security Act with reference to the employees?

"Inasmuch as the grasshopper season is now in full swing, I would like to hear from you immediately. No doubt, this matter has already

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had your attention and you can furnish me with a copy of some opinion rendered, but if not I would like your opinion herein."

We have searched the laws and we are unable to find any statute empowering or directing the Governor to appoint such a committee as you inquire about. Therefore, we must conclude that such committee is appointed without authority of law and that it is accordingly an unofficial committee. Such committee was no doubt appointed in order to comply with rules of the department of the Federal Government which handled such matters.

Since the committee inquired about was not created by authority of law, the members thereof are not public officers. The accepted definition of public officers in this state is found in the case of State ex rel v. Bus, 135 Mo. l.c. 331-332, in the following language:

"A public office is defined to be 'the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public.' Mechem, Pub. Offices, 1. The individual who is invested with the authority and is required to perform the duties is a public officer."

By similar reasoning, the members of such committee are not employees of the state since there is no law of the state authorizing or directing such work to be done.

CONCLUSION

It is, therefore, our opinion that the members of the committee appointed by the Governor to supervise the mixing

and distribution of poison bait for insects are not officers or employees of the state and that they are not exempt from liability for tort by reason of their appointment by the Governor.

II

Your next inquiry is whether the committee inquired about could incorporate under the provisions of Article 24, Chapter 87, R.S. No. 1929. Section 12677 of said Article reads as follows:

"Eleven (11) or more persons, a majority of whom are residents of this state, engaged in the production of agricultural products, may form a non-profit co-operative association, without capital stock, under the provisions of this article, for the following purpose or purposes: To engage in any activity in connection with the marketing or selling of the agricultural products of its members or with the harvesting, preserving, drying, processing, canning, packing, grading, storing, handling, shipping or utilization thereof or the manufacturing, or marketing of the by-products thereof; or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies; or in the financing of the above enumerated activities; or in any one or more of the activities specified herein. (Laws 1923, p. 111, Section 2.)"

The activity of fighting grasshoppers in which the committee is engaged might properly be classed as an activity in connection with the preserving of agricultural products. Under the above article, eleven (11) or more persons may incorporate into a non-profit cooperative association. However, it should be noted that the activities authorized to be engaged in by such an association are limited to those connected with the

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agricultural products or by-products of the members of such associations. Therefore, if the committee inquired about consists of eleven (11) or more persons and they should incorporate under said Article 24 of Chapter 87, R. S. Mo. 1929, their activities would be limited to the protection of the agricultural products or by-products of the members of said association only. They could not engage generally in protecting the crops or products of other farmers.

CONCLUSION

It is, therefore, the opinion of this office that the committee appointed by the Governor to supervise the mixing and distribution of poison bait for insects can incorporate under the provisions of Article 24, Chapter 87, R. S. Mo. 1929, provided there are as many as eleven (11) of them, but the activities of such incorporated association would be limited to protecting the agricultural products or by-products of the members of such association only.

III

Your next question is whether the committee inquired about would be subject to the Social Security Act with respect to its employees.

We take it you have in mind Title IX of the U. S. Social Security Act, found at page 126 of the 1937 Cumulative Annual Pocket Part to Title 40-42 USCA. By Section 1107 of said Act, agricultural labor is expressly exempted from the operation of the law. We think that the activities inquired about would properly be classed as agricultural labor.

CONCLUSION

It is, therefore, the opinion of this office that the committee appointed by the Governor to supervise the mixing

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and distribution of poison bait for insects would not be subject to the National Social Security Act with respect to the employees of such committee.

Yours very truly

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APPROVED:

J. W. BUFFINGTON
(Acting) Attorney General

HHK/w