POWER OF GRAIN WAREHOUSE COMMISSIONER TO EMPLOY INSTRUCTOR:

Grain Warehouse Commissioner may employ an outside State instructor for purpose of training men to measure grain in warehouses.

June 25, 1942

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Mr. Turner D. Morton, Commissioner
Grain Inspection and Weighing Dept.
Jefferson City, Missouri

Dear Mr. Morton:

We have for request of June 24, 1942, which is as follows:

> "In an effort to more fully cooperate with the Federal Government in its defense Program, this Department has been called upon to perform a service never before given by this State; that of measuring, instead of weighing, the contents of public warehouses.
>
> "This necessitates the instructing of men in a line work of which comparatively little is known. The services, in an advisorary capacity, of an outstanding warehouse examiner who is a resident of another state as well as an employee of that State's Grain Department can be obtained at a nominal monthly fee. Are there any legal objections to this Department temporarily retaining the services of such a man during the period of formation of this division of our Department?
>
> "I will greatly appreciate your opinion in this matter at your earliest convenience."

The duties of the Grain Warehouse Commissioner are set out in the new act, Laws of Missouri, 1941, page 376, Section 7, and are as follows:

> "It shall be the duty of the Grain Warehouse Commissioner to have a general supervision of the sampling, inspection, weighing, and public warehousing of grain as required by this act, to supervise the handling, sampling, inspection, weighing, and storage of grain in public warehouses; to supervise protein or other chemical analysis of grain where laboratories are now or may hereafter be established; to establish necessary rules and regulations for all the aforesaid functions, and for the management of the public warehouses of the state, as such rules may be necessary to enforce the provisions of this act; to keep proper records of all sampling, inspection, weighing, protein or other chemical analysis performed under the provisions of this act, for which purpose he shall have provided books, blanks and other material needed in order to keep perfect and proper records; to fix the fees in accordance with provisions of this act; to represent the grain department in all matters requiring his attendance within and without the state of Missouri; to employ and pay the necessary personnel in accordance with provisions of this act. It shall be the duty of the Commissioner to appoint all necessary personnel required to perform the functions of the department under his supervision, such personnel including chief inspectors and inspectors,

> chief weighmasters, weighers, warehouse examiners, samplers and helpers, chief clerks and clerks, chief chemists and assistant chemists, chief scale inspectors and assistant scale inspectors, chief registrars and assistant registrars, stenographers, and such additional personnel as seasonable demands may require from time to time." (Underscoring ours.)

We wish to point out specifically that the Commissioner of the Gr in Warehouse Department is the general supervisor of the sampling, inspection, weighing and public warehousing of grain. We also wish to point out the act specifically makes it the duty of the Commissioner to appoint all necessary personnell required to perform the functions of the department.

Webster defines "inspect" to mean "to look; to view or oversee for the purpose of examination; to look into; to view and examine for the purpose of ascertaining the quality or condition of the thing; * * "

In the case of Silfies v. Austin, 158 A. 661, 662, 104 Pa. Super. 344, the court said:

> " * * *There is no substantial difference between services of 'superintendence' and of 'inspection,' inspection being defined as act or process of inspecting or looking at carefully; a strict or prying examination; close or careful scrutiny, or investigation; act of overseeing; official examination or superintendence, and 'inspector' being one who inspects, views, or oversees. Mechanic's lien can be filed for architect's services coupled with services

> for 'inspection' and issuing certificates during construction. * * * "

The law is well settled in this State that where a statute is plain and unambiguous it is not necessary to place a construction upon it. It is only necessary to take the obvious intent of the Legislature and act in accordance therewith. State v. Keller, 137 S.W. (2d) 989; Fichtner v. Mohr, 18 S. W. (2d) 739; Cummins v. Kansas City Public Service Co. 66 S. W. (2d) 921; 36 Cyc. 1106.

From the foregoing it is seen that the Grain Warehouse Commissioner has the right under the statute to employ an instructor as part of his personnel to properly carry out the duties of his office. The only question remaining then, does the Commissioner have the right to hire a man from outside the State, as was stated in the request. We here call attention to Section 10, Article 8, Constitution of Missouri, which is as follows:

> "No person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States, and who shall not have resided in this state one year next preceding his election or appointment."

In the case of State v. Truman, 64 S. W. (2d) 105, l.c. 106, the court sets out just what public office is meant to be in the following words:

> " * * * In Mechem on Public Officers, pp.1 and 2, sec. 1, it is said: 'A public office is 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. The individual so invested is a public officer.' We have approved this definition in State ex rel. Walker v. Bus, 135 Mo. 325, 331, 332, 36 S. W. 636, 33 L. R. A. 616, State ex rel. v. Hackmann, 300 Mo. 59, 254 S. W. 53, 55, and Hasting v. Jasper County, 314 Mo. 144, 282 S. W. 700, 701; and it appears to be in harmony with the great weight of authority. State ex rel. Key v. Bond, 94 W. Va. 255, 118 S. E. 276, 278, 279; State ex rel. Landis v. Board of Commissioners, 95 Ohio St. 157, 115 N. E. 919, 920; Bunn et al. v. People ex rel., 45 Ill. 397, 409. * * "

Judge Ellison, in the case of State v. Bode, 113 S. W. (2d) 805, l.c. 809, said as follows:

> " * * * It is our view that the Director of Conservation is not a public officer. The constitutional amendment does not fix any term of office, prescribe any duties, fix any salary, require any oath or bond, or directly vest the director with any of the indicia of office. He has no independent public duties or authority, State ex rel. Pickett v. Truman, 337 Mo. 1018, 1022, 64 S. W. 2d 105, 106 (2). Whatever he does is subject to the approval of, and as manager or director for, the commission. It is evident that the amendment contemplates the Director of Conservation shall be an expert learned in the control, management

> restoration, conservation, and regulation of the bird, fish, game, forestry, and all wild life resources of the state. Under the amendment the commission could appoint as director an expert in forestry for a brief time, discharge him, and appoint another learned in some other field. The position of director is analogous to that of the president of our State University appointed by the Board of Curators or the president of one of our State Teachers Colleges appointed by the Board of Regents. * * * * "

This statement, we believe, properly sets out the relation of the instructor who is sought to be appointed to the State Grain Warehouse Department, i.e. the instructor hired by the Grain Warehouse Commissioner is not an officer provided for by Statute with a fixed salary, official oath, bond, etc., but an employee of the Commissioner and subject to dismissal at any time. Therefore, we believe that such an instructor would not be a public officer or hold a public office as set out in Section 10, Article 6, Constitution of Missouri.

CONCLUSION

It is, therefore, the opinion of this office that the Grain Warehouse Commissioner may employ a warehouse examiner, who

is a resident of another state, in an advisory capacity to instruct men in the work of measuring the contents of public warehouses.

Respectfully submitted,

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APPROVED:

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Attorney-General

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