

PURE SEED LAW ) Commissioner of Agriculture has no authority  
PERMIT TO SELL SEED ) to promulgate regulation requiring seed law  
violator to show cause why he should be issued  
a seedsman's permit for the following year.

September 30, 1951

10/3/51

Mr. Loyd L. Combs  
Assistant Director  
Feed and Seed Divisions  
Department of Agriculture  
Jefferson City, Missouri



Dear Sir:

We have your recent request for an opinion of this department. Your letter is as follows:

"I would like a legal opinion on the following:

"Section 14267 of the Missouri Seed Law states in part: 'It shall be unlawful for any seedsman to sell, distribute, offer or expose for sale or distribution in this state, any agricultural seed or mixture thereof, or vegetable seed as defined in this law, without first securing a permit approved by the department of agriculture, which permit shall be issued annually by the department of agriculture upon the payment of an annual fee of one dollar. Such permit shall expire December 31st of each year.'

"Based upon the above section of the law, would the following regulation be valid?

"Any consistent violator of the Missouri Seed Law may be asked to show cause why he should be issued a seedsman's permit the following year.

Mr. Loyd L. Combs

"The main point in the above section of the Law upon which we base the regulation is the phrase 'without first securing a permit approved by the Department of Agriculture.'

"Since a seedman's permit is essentially a man's license to do business in the state in accordance with the provisions of the Missouri State Seed Law, it is hard to see why the Department of Agriculture should continue to approve the permit of a seedsman who puts forth little or no effort to abide by the Law and offer a good quality product to the farmer."

The statute, a construction of which is essential to the answer of your question, is set forth in your letter together with your proposed regulation. We are of the opinion that the statute does not confer upon you the power to promulgate the proposed regulation for the reason that there is no provision in the law authorizing the department of agriculture to refuse to issue a permit to a person who applies for it and offers the \$1.00 fee provided for and there is no provision authorizing the department to revoke a permit.

We call attention to the fact that a seedsman has not violated the above-quoted section until he has engaged in the seed-selling business without a permit. We are of the opinion that if and when he engages in such business without a permit he is immediately subject to the penalties prescribed in Section 266.130 RSMo 1949, which section is here quoted as follows:

"1. It shall be unlawful for any person, firm or corporation to sell, offer or expose for sale within this state any agricultural seeds or mixtures of agricultural seeds, or vegetable seeds, as defined in sections 266.010 to 266.140, for seeding purposes within this state without complying with the requirements of said sections or to falsely mark or label any agricultural or vegetable seeds, or to interfere in any way with the said department or its agents in the discharge of the duties named in said sections,

Mr. Loyd L. Combs

"2. In addition to the penalties imposed in sections 266.010 to 266.140, any lot of seed as prohibited in this section may be ordered temporarily withdrawn from sale by the department, pending either the informal adjustment according to law between the authorized representative of the department and the seed dealer or person in charge of the seed in question, or the filing of a formal complaint, without undue delay, with the attorney general or prosecuting attorney."

The procedure for the assessment of these penalties is set forth in Section 266.140, RSMo 1949. It is therefore apparent that the provision for the issuance of a seedsman's permit is strictly a revenue measure rather than a regulatory measure.

CONCLUSION

We are accordingly of the opinion that the proposed regulation is not authorized by law.

Respectfully submitted,

APPROVED:



J. E. TAYLOR  
Attorney General

SAMUEL M. WATSON  
Assistant Attorney General

SMW:mw