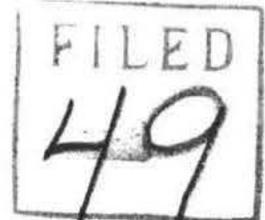


AGRICULTURE:  
ADMINISTRATIVE RULES:  
FERTILIZER:

Director of Missouri Agricultural experiment station at Columbia, Missouri, having the authority to promulgate regulations under the Missouri Fertilizer Law, Sections 266.291 to 266.351, RSMo 1959, may not, in the exercise of such power add to the labeling requirements of Sec. 266.321, RSMo 1959, because such action would be adding to the Fertilizer law and adding to its scope.

April 13, 1961



Dean Elmer R. Kiehl  
College of Agriculture  
University of Missouri  
Columbia, Missouri

Dear Dean Kiehl:

This is in reply to your letter dated March 6, 1961, in which you state:

"The Missouri Fertilizer Law (Chapter 266.290-266.350 RSMo) is designed to insure that materials sold contain the quantities of ingredients guaranteed. At present the law is only concerned with nitrogen, phosphorus and potassium. Other elements, such as magnesium, sulfur, boron, zinc, copper, manganese, molybdenum, and possibly iron, may be needed on some Missouri soils, and are being included in some fertilizers by many manufacturers. We have been approached by control officials in another state to adopt uniform requirements for minimum content, guarantee, and labeling, when these additional elements are included. This is desirable since manufacturers may sell the production of one manufacturing plant in a number of states. Also, minimum content requirements would eliminate some unscrupulous promoters.

"I would appreciate your interpretation of the law as to whether it is possible to require a guarantee of these additional elements by adopting regulations as provided by 266.340, '(2) To adopt, after public hearing, such reasonable rules and regulations necessary to secure the efficient enforcement of sections 266.290 to 266.350)', or whether

a change in the law will be necessary?

"Paragraph 3, section 266.290 - Definitions- is quite broad. '(3) "Fertilizer" means any substance containing nitrogen, phosphorus, potassium, or any other element or compound recognized as essential or used for promoting plant growth, or altering plant composition, which is sold or used primarily for its plant nutrient content, the consumer's purchase price of which exceeds ten dollars per ton, and which is to be sold or offered for sale for consumption or use in this state.'

"However, the present guarantee requirement as provided in item 3, paragraph 1 of section 266.320 states:

'(3) The guaranteed chemical composition of the fertilizer, expressed in the following terms:

- (a) Percent of total nitrogen
- (b) Percent of available phosphoric acid
- (c) Percent of soluble potash.

Unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphoric acid, and the degree of fineness as expressed in percentage passing through standard mesh sieves. In the case of bone, tankage, and other natural organic phosphate materials, only total phosphoric acid must be guaranteed.'

"The definition of a fertilizer is quite general, but the information required on containers is specific. Should it become desirable, or necessary to require a guarantee for additional elements, does the Director have the authority under the present law to require this additional information, or will it be necessary to change the law? I would appreciate your interpretation.

"If it would be helpful, I will have someone from the Agricultural Experiment Station who is familiar with fertilizer industry meet with your representative to supply additional information.

"I am enclosing a copy of the revised Fertilizer Law as compiled by the Agricultural Experiment Station. The last page contains some of the regulations that have been adopted after public hearings."

Administrative personnel and agencies may be authorized by a Legislature to promulgate regulations designed to aid in the disposition of their duties and to effectuate the purpose of the statute under which they operate. This principle was expressed by the Missouri Supreme Court in the case of Ex Parte Williams, 139 SW 2d 485. In its opinion the court stated on page 491 as follows:

"'A legislative body cannot delegate its authority, but alone must exercise its legislative functions. 12 C.J. 839; 6 R.C.L. 175. It may empower certain officers, boards, and commissions to carry out in detail the legislative purposes and promulgate rules by which to put in force legislative regulations. It may provide a regulation in general terms and may define certain areas within which certain regulations may be imposed, and it may empower a board or a council to ascertain the facts as to whether an individual or property affected come within the general regulation or within the designated area.'"

The Legislature therefore has validly delegated to you, by Section 266.341 (2) RSMo 1959, the power to adopt reasonable rules and regulations necessary to secure the efficient enforcement of the Missouri Fertilizer Law. (Section 266.291-266.351, RSMo 1959).

There are however, limits on the power to promulgate regulations. We first direct attention to Section 94, page 414 C.J.S. Vol. 73, Public Adm. Bodies & Procedure.

"A public administrative body may make only such rules and regulations as are within the limits of the powers granted to it and within the boundaries established by the standards, limitations, and policies of the statute giving it such power, and it may go no further than to make administrative rules and regulations which fill in the interstices of the dominant enactment. It may make only rules and regulations which effectuate a law already enacted, and it may not make rules and regulations which are inconsistent with the provisions of a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute, and it may not, by its rules and regulations amend, alter, enlarge, or limit the terms of a legislative enactment."

Dean Elmer R. Kiehl

Am. Jur. Vol. 42: P. 358 Public Admin. Law, Section 53:

"Since the power to make regulations is administrative in nature, legislation may not be enacted under the guise of its exercise by issuing a regulation which is out of harmony with, or which alters, extends, or limits, the statute being administered, or which is inconsistent with the expression of the law makers intent in other statutes."

It can be seen by these authorities that while administrative agencies and personnel can adopt rules aiding in the administration or enforcement of a legislative act, they cannot enlarge, limit, or alter the statute under which they operate.

Your problem is that you want to enlarge the scope of Section 266.321-1 (3) RSMo 1959, by adding to the materials there required to have their guaranteed chemical composition placed on fertilizer labels, other materials such as magnesium, sulfur, boron, zinc. The courts have specifically limited administrative agencies and personnel in any attempt to add to statutory provisions something for which the Legislature has not provided.

The Supreme Court of the United States stated the rule in the case of Campbell v. Galeno Chemical Co., 281 US 599, 610, 74 Law Ed. 1063, 1069 (Sup. Ct. U.S. 1929). The Volstead Act had entrusted to the Treasury Department the task of issuing permits for the purchase, manufacture and sale of alcohol for certain purposes. The act also provided a procedure by which the permits could be revoked by the department. The Treasury attempted to promulgate a regulation which revoked all existing permits and set up new added requirements for the reissuance. The court held the regulation invalid. In his opinion for the court, Mr. Justice Brandeis stated:

"The limits of the power to issue regulations are well settled. Int. R. Co. v. Davidson, 257 U.S. 506, 514, 66 Law Ed. 341, 343, 42 Sup. Ct. Rep. 179. They may not extend a statute or modify its provisions."

The lower Federal Courts have also expressed this principle. In United States v. Powell, 95 Federal 2nd 752 (CCA4, 1938) the Circuit Court of Appeals, for the 4th circuit struck down a Treasury Department regulation placing a tax on the issuance of receiver's certificates. Congress had imposed a tax on certificates and debentures issued by corporations, but had said nothing about things of that nature issued by individuals such as receivers. The Court stated at Page 754:

"While it is true that great weight is accorded administrative application and construction of statutory provisions, \* \* \* it is equally true that

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where the provisions of an act are plain and unambiguous, the governmental department administering the statute has no power to extend or amend it by regulations. The power of an administrative officer to prescribe regulations does not carry with it the power to make law."

State Courts have expressed the rule also. In Whitcomb Hotel v. California Employment Commission, 24 Cal. 2d 753, 151, P. 2d. 233, 236 (1944), the California Employment Commission attempted to add a provision to the Unemployment Compensation Law, by limiting the period that benefits would be denied people who did not seek work. In invalidating this regulation the Supreme Court of California said:

"An administrative officer may not make a rule or regulation that alters or enlarges the terms of a legislative enactment."

#### CONCLUSION

It is the opinion of this department that in issuing regulations regarding the inclusion on fertilizer labels of the guaranteed chemical composition of magnesium, sulphur, boron and zinc and other elements mentioned in your letter, you would be adding to the provisions of the Fertilizer Law and extending its scope. Such action on your part would, under the preceding authorities, be invalid. In order to alleviate the problem which exists as to these additional elements you should attempt to have the Legislature amend Section 266.321, RSMo 1959 so as to include them.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Ben Ely, Jr.

Yours very truly,

THOMAS F. EAGLETON  
Attorney General

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