

DEPARTMENT OF AGRICULTURE:
MISSOURI GRAIN WAREHOUSE LAW:
GRAIN SAMPLERS:

A private corporation may not be authorized to accept and retain fees for collecting samples for inspection and grading of grain by the Department of Agriculture pursuant to the provisions of the Missouri Grain Warehouse Law.

Such samples must be collected by an employee of the state and the fees paid to the Collector of Revenue and deposited in the State Treasury.

OPINION NO. 267

December 19, 1968

Mr. Dale Stanton, Director
Grain Warehouse Division
Department of Agriculture
Jefferson Building
Jefferson City, Missouri



Dear Mr. Stanton:

This is in response to your request for an opinion on the question of whether a private corporation may accept and retain fees for collecting samples of grain for the inspection and grading of grain under the Missouri Grain Warehouse Law. Your question arises in view of the fact that a corporation is now installing automatic grain samplers in elevators in Missouri and, as stated in your opinion request:

"They install this automatic sampler on a leased basis, and include in the lease provisions for their organization to not only install the automatic sampler, but to maintain the sampler, to provide the employee, they will take the grain from the sampler and transport the sample to an inspection agency for official grade, and the results of the grade is returned to the elevator operator."

It is apparent that under this arrangement the corporation collecting the sample does not purport to be a sampler appointed by the Commissioner of Agriculture, paid a salary by the state and who performs services for which a fee is paid to the State Collector of Revenue, but is a corporation which is to be paid for its services by the owner of the grain which payment is to be kept by the corporation.

Section 411.030, RSMo Cum. Supp. 1967, provides that the Department of Agriculture shall have the exclusive right to officially inspect and grade all grains where inspection points of the Department are established. Section 411.070, RSMo Cum. Supp. 1967, provides that the Commissioner shall supervise the handling, sampling, inspection, weighing and storage of grain in public warehouses, and employ, fix the salaries and pay all necessary personnel required to administer, execute and perform the duties required by the provisions of the Missouri Grain Warehouse Law. Section 411.150, RSMo Cum. Supp. 1967, is as follows:

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- "1. The commissioner shall have full power to fix the fees for sampling, inspection, weighing, protein or other chemical analysis, and moisture testing or for additional services of whatever nature consistent with the provisions of sections 411.010 to 411.701, which fees shall be regulated in such manner as will, in the judgment of the commissioner, produce sufficient revenue to meet the necessary expenses of the services of sampling, inspection, weighing, chemical analysis or moisture testing, and for administration and clerical work in connection therewith.
2. All fees shall be paid to the collector of revenue and thereupon deposited in the state treasury to the credit of the grain warehouse fund, and from such fund appropriations may be made for the purposes of paying salaries and expenses necessary for complying with the provisions of sections 411.010 to 411.701.
3. At the end of each fiscal period, all money remaining in the fund herein established in excess of one hundred thousand dollars shall be transferred by the state treasurer and become a part of the general revenue fund."

The foregoing statutory provisions show the legislative intent to be that the person taking grain samples must be a state employee; that the fees for taking such samples must be fixed by the commissioner; and, that such fees must be paid to the collector of revenue and deposited in the state treasury. Therefore, it would not be possible under our statutes to authorize a private corporation to accept fees to be retained by the corporation for furnishing grain samples.

CONCLUSION

It is the opinion of this office that a private corporation may not be authorized to accept and retain fees for collecting samples for inspection and grading of grain by the Department of Agriculture pursuant to the provisions of the Missouri Grain Warehouse Law. Such samples must be collected by an employee of the state and the fees paid to the Collector of Revenue and deposited in the State Treasury.

The foregoing opinion, which I hereby approve, was prepared by my assistant, L. J. Gardner.

Very truly yours,


NORMAN H. ANDERSON
Attorney General