

POULTRY:
AGRICULTURE:

1. "The Missouri State Poultry Association" has authority to publish and make available to

the public the results of their experiments with poultry in this state. 2. "The Missouri State Poultry Association" members in the performance of their duties are not personally liable for acts not maliciously done.

OPINION NO. 329

October 7, 1971

Mr. Charles W. McElyea, Director
Missouri Poultry Experiment
Station
P. O. Box 530
Mountain Grove, Missouri 65711



Dear Mr. McElyea:

This is in response to your request for an opinion from this office as follows:

"We would like to run our egg production tests on all strains of layers that are available to Missouri producers by purchasing the baby chicks on the open market without the knowledge of the breeders and publish reports based on our testing program. The breeders would not make an entry nor pay an entry fee as is now required."

"What would be the legal aspects on the Poultry Board if they were to decide to sample and test all commercial type egg producers of eggs sold in the State of Missouri and publishing the report as public information? A copy of our latest final report is enclosed to give you an idea of the detailed information it encompasses."

We understand you want to know if there is any personal liability of the members of the board in publishing the report.

The law governing "The Missouri State Poultry Association" and the State Poultry Experiment Station is found in Chapter 262, RSMo.

The first question that arises concerns the authority of "The Missouri State Poultry Association" and the State Poultry Experiment Station to conduct experiments with the different varieties of poultry and eggs and make the results of their experiments available to the public.

Mr. Charles W. McElyea, Director

"The Missouri State Poultry Association" is created by Section 262.100, RSMo 1969, as a body corporate with perpetual succession, power to sue and be sued, and to complain and defend in all courts.

Section 262.110, RSMo 1969, defines the duties of "The Missouri State Poultry Association" in part as follows:

"1. It shall be the duty of the state board of poultry to promote and encourage the poultry industry in the state of Missouri in all its branches; to organize the poultry raisers of the state, for the purpose of affording a systematic means for gathering useful information for the use of the board, and to publish the same for the benefit of the farmers and poultry raisers of the state of Missouri. It shall be their duty to gather poultry statistics and information as to the best and most profitable means of raising and handling poultry and publish the same in bulletins as frequently as may be deemed expedient; hold poultry institutes in different sections of the state, for the purpose of giving instructions in the breeding and raising of poultry; provide for and manage one annual state poultry exhibition at such time and place as may be determined by the board; provide lectures for the promoting and encouraging the poultry interests of the state."

Section 262.200, RSMo 1969, authorizes "The Missouri State Poultry Association" to establish a state poultry experiment station and defines its function in part as follows:

"1. In order to determine and demonstrate the importance of improved and better methods of feeding, housing, incubation, brooding, breeding and rearing of poultry, and to bring the results of scientific research of state and federal experiment stations within the reach of all farmers and poultry raisers of Missouri, the state poultry board shall establish, conduct and maintain a state poultry experiment station. The objects and purposes of said experiment station shall be to experiment with the different kinds of houses, incubators, brooders, and applicances, and the different varieties of poultry, to determine which are best adapted to the farmers and poultry raisers

Mr. Charles W. McElyea, Director

of Missouri, in the different sections thereof, to make a study of different diseases to which poultry is subject, and the remedies to prevent such diseases and to make all other experiments and tests and do any and all other things which shall tend to the betterment of the poultry interests of the state.

* * *

"5. It shall be the duty of said secretary, so far as possible, to verify such experiments and results and to embody such of them as he deems advisable and of public interest in his annual reports, bulletins and publications. The state poultry board shall print an annual report and shall carefully digest and compile the results obtained as a result of experiments conducted at this station and publish the same from time to time in their reports and in bulletin form in language as free from technicalities as possible, for free distribution to the farmers of the state, to the public libraries, to the governor, and the members of the general assembly, and elsewhere as the judgment of the board may direct." (emphasis supplied)

It is our view that under these above statutory provisions "The Missouri State Poultry Association" and the State Poultry Experiment Station have authority to conduct experiments with the different kinds and varieties of poultry and eggs to determine which are best adapted to the farmers and poultry raisers of Missouri in the different sections of the state and to do any and all things necessary in conducting the experiments and testing they think will be to the betterment of the poultry industry of the state. It is our view also that "The Missouri State Poultry Association" has express authority to compile the results obtained as a result of experiments conducted at the State Poultry Experiment Station and publish the same from time to time in their reports and in bulletins for free distribution to the farmers of the state, to the public libraries, and elsewhere as the judgment of the Board may direct.

As we understand, you want to know the legal liability of "The Missouri State Poultry Association" members in making the results of their experiments in the different types of poultry as public information. In 3 C.J.S., Agriculture, paragraph 6, page 377, the general rule is stated as follows:

Mr. Charles W. McElyea, Director

"The general rule is that an agricultural board as an agent of the state in the exercise of governmental functions, is not subject to the liability of a private or quasi-public corporation. Unless the right of action is expressly given by statute, the board is not liable for an injury because of the negligence of an officer or employee, and, although expressly providing that the state board of agriculture may sue and be sued, the statute, creating the board as an agency of the state, does not refer to liability on a tort but has reference only to obligations incurred by contract in the management of the department of agriculture; but it has been held that although the state board of agriculture is a public organization for public purposes only, if under the statute creating it the board is a corporate entity, it may be sued."

Section 262.130, RSMo 1969, provides for the Governor to appoint six members of "The Missouri State Poultry Association" for definite terms of office and to serve until their successors are appointed and qualified. It is our view they are state officers. State ex inf. McKittrick v. Langston, 84 S.W.2d 131 (Mo. 1935); State ex rel. Walker v. Bus, 135 Mo. 325 (1896).

In 67 C.J.S., Officers, paragraph 125, page 417, the general rule regarding liability of public officers is stated as follows:

"As a general rule and apart from statute, public officers, when acting in good faith within the scope of their authority, are not liable in private actions, and the application of this rule of immunity cannot be avoided by allegations that the officer involved was acting or is being sued in his personal capacity. Mistakes of judgment, or improper construction of the law defining his duties, by a public officer acting in the discharge of his official duties do not give rise to a personal action against him, although some individual may suffer loss as a result thereof. However, immunity from suit as an attribute of sovereignty cannot be invoked by public officers when sued for their own torts, and one cannot escape the consequences of his wrongful act on the ground that it was an official act."

Mr. Charles W. McElyea, Director

In *Edwards v. Ferguson*, 73 Mo. 686 (1881), the court held that public officers who are invested with discretionary powers in the performance of duties cannot be held to a personal liability for acts not maliciously done.

In *Sharp v. Kurth*, 245 S.W. 636 (St.L.Ct.App. 1922), the court held that special commissioners of a road district are not liable for their mistake of judgment or acts of negligence in doing work. The court state, l.c. 638, as follows:

"It is likewise clear that the individual defendants, being special commissioners of the road district, are not liable for their mistakes of judgment or their acts of negligence in doing work. In *Cook v. Hecht*, 64 Mo. App. 273, loc. cit. 279, it is said:

'These road overseers are statutory officers, clothed with certain discretionary powers. It is made their duty to exercise proper diligence in keeping the roads in good repair (Revised Statutes 1889, § 7807), and as to how this shall be done is necessarily left to their judgment. They come, then, within the scope of the rule, well established, that public officers, vested with discretionary powers in the performance of certain duties, cannot be held individually liable for their acts, unless willfully, maliciously, and oppressively exercised. *Reed v. Conway*, 20 Mo. 22; *Edwards v. Ferguson*, 73 Mo. 686. They cannot be individually held for mere mistakes in judgment. They are not liable so long as they honestly and in good faith perform the work intrusted to them. The injury must be maliciously and willfully committed; and by willful, says Judge Ryland in *Reed v. Conway*, supra, is meant "contrary to a man's own conviction."'"

It is our view that the members of "The Missouri State Poultry Association" are public officers invested with discretionary powers in performance of their duties and cannot be held to personal liability for acts in the performance of their duties not maliciously done.

CONCLUSION

It is the opinion of this office that:

Mr. Charles W. McElyea, Director

1. "The Missouri State Poultry Association" has authority to publish and make available to the public the results of their experiments with poultry in this state.

2. "The Missouri State Poultry Association" members in the performance of their duties are not personally liable for acts not maliciously done.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in dark ink and is positioned above the typed name and title.

JOHN C. DANFORTH
Attorney General