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ATTORNEY GENERAL OF MISSOURI  
JEFFERSON CITY

February 13, 1973

OPINION LETTER NO. 81

Mr. James B. Boillot  
Commissioner of Agriculture  
Department of Agriculture  
Post Office Box 630  
Jefferson City, Missouri 65101

Dear Mr. Boillot:

This is in response to your request for an opinion as to whether all or any part of the statutory authority vested in the Commissioner of Agriculture can be delegated to an autonomous body, the members of which are appointed by the Commissioner or the Governor, or a body which is under the direction and control of the Commissioner.

The principle to be followed in determining whether or not the Commissioner of Agriculture can delegate his statutory duties was set forth by the Missouri Supreme Court in *State ex rel Skrainka Construction Company v. Reber*, 126 S.W. 397, 399 (Mo. 1910):

" . . . An officer to whom a discretion is intrusted by law cannot delegate to another the exercise of that discretion, but after he has himself exercised the discretion he may, under proper conditions, delegate to another the performance of a ministerial act to evidence the result of his own exercise of the discretion.  
. . . "

The legislature has seen fit to designate the Commissioner of Agriculture as the official in charge of the State Department of Agriculture, with full power to supervise the State Fair and all of the legalized departments of the state which are of a regulatory nature for the advancement of horticulture and agriculture. Sections 261.010 and 261.020, RSMo 1969. In order to carry out his

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duties, the Commissioner has the power to appoint all employees necessary at salaries fixed by law for the administration of laws under his charge. Section 261.040, RSMo 1969.

Proper administration of the duties placed upon the Commissioner by statute would necessarily involve the exercise of discretion on his part. This being so, it is our opinion that the Commissioner of Agriculture cannot delegate any of his statutory duties to an autonomous body composed of members appointed by either the Commissioner or the Governor. However, the appointment of a body to serve at the pleasure and under the direction of the Commissioner, said body to assist the Commissioner in carrying out his statutory duties and not to replace him, is a matter of internal organization only.

Yours very truly,



JOHN C. DANFORTH  
Attorney General