



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

October 10, 1953

Hon. John C. White, Commissioner
Texas Department of Agriculture
Austin, Texas

Letter Opinion No. MS-101

Re: Inspection of citrus fruits,
tomatoes, and cabbage by the
Commissioner of Agriculture

Dear Mr. White:

Your request for an opinion propounds the following questions:

"1. Does the Commissioner of Agriculture have the power or duty to make the inspections provided for under Article 118a, 118c-1, and 118c-2, V.C.S., in the absence of the existence of a cooperative agreement between the Commissioner of Agriculture and the United States Department of Agriculture?"

"2. If the first question is answered in the affirmative, does the Commissioner of Agriculture have authority to assess and collect the contributions provided for in these statutes and to use the collections to defray the expenses of administration and enforcement of these statutes?"

Your questions involve the construction of the statutes designated therein.

In ascertaining legislative intent, consideration will be given to the history of the subject matter involved, the end to be attained, the mischief to be remedied, and the purposes to be accomplished. West Texas Utilities Company v. Mason, 229 S.W.2d 404 (Tex.Civ.App. 1950) affirmed 150 Tex.18, 237 S.W.2d 273 (1951).

A construction rendering a statute impractical of enforcement will be avoided. Wilson v. Underhill, 131 S.W.2d 19 (Tex.Civ.App.1939).

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Another fundamental rule requires that a statute be construed as a whole and that all of its parts be harmonized, if possible, so as to give effect to the entire Act according to the evident intent of the Legislature. 39 Tex. Jur. 209, 210, Statutes, Sec. 113.

An examination of the statutes mentioned in your questions reveals that the Legislature expressed in each one that the purpose of enacting the same was to provide the means whereby the producers and shippers of citrus fruit, tomatoes, and cabbage may secure prompt and efficient inspection, grading, and classification of these agricultural products at reasonable cost, and because the Legislature recognized that the standardization of shipments of such products through the proper grading and classification of these products by prompt and efficient inspection under competent authority would confer benefits upon growers, shippers, carriers, receivers, and consumers, in that the certification by competent authority would furnish the grower and shipper of such products with prima facie evidence of the quality, quantity, and condition of the products so certified, and because such certification would guarantee to the carrier and receiver the quality of products carried and received by them and would insure the ultimate consumers of the quality of products delivered to them.

Each of these statutes expressly states that the inspection, classification, and grading of citrus fruit, tomatoes, and cabbage "shall be under the direction of the Commissioner of Agriculture of the State of Texas."

Under these statutes, the Commissioner of Agriculture is authorized to adopt, prescribe and promulgate other different and additional grades and standards to those provided in the statutes so long as they do not conflict with the United States grades adopted by the statutes. The Commissioner is authorized to issue rules and regulations relating to standards, grades, packing and marking of these products; also to issue rules and regulations relative to containers and subcontainers to be used in packing and shipping them.

Each of these statutes provides that these products must conform with the grades or classifications required by the statute or those promulgated by the Commissioner of Agriculture. The statutes expressly make it unlawful to ship citrus fruit, tomatoes, or cabbage unless the required inspection has been accomplished. Penal provisions are set out

for violations of these statutes. It is thus quite evident that the required inspections are absolutely mandatory.

The statutes under consideration also give the Commissioner authority to enter into cooperative agreements with the United States Department of Agriculture with respect to inspection of citrus fruit, tomatoes, and cabbage, the amounts of contributions to be collected from those using the inspection services provided for by these statutes, and the handling and disbursement of contributions collected.

The source of the power of the State of Texas to regulate the grading, classification, and inspection of citrus fruits, tomatoes, and cabbages is found in its police power as a sovereign to enact inspection laws designed to safeguard the public against fraud, imposition, and injury, and to protect the public health, safety, and welfare by providing for the examination or inspection of property by an authorized public official in order to determine whether the prescribed standards are complied with.

The history of legislative enactments dealing with inspections of agricultural products in Texas is not new. As early as 1917 the Legislature passed a law establishing grades and standards and providing for mandatory inspection of fruits and vegetables, with penal provisions for violations. Ch. 181, Acts 35th Leg., 1917, R.S., p. 396.

In 1931 the Federal Government authorized a voluntary federal inspection service for agricultural products entering interstate commerce and offered to cooperate with state and other agencies in setting up joint inspection programs. 7 U.S.C.A. §499n. A cooperative agreement was entered into between the Commissioner of Agriculture of Texas and the United States Department of Agriculture, and this agreement was in existence at the time Articles 118a, 118c-1, and 118c-2, Vernon's Civil Statutes, were passed. While each of these statutes specifically authorizes the Commissioner of Agriculture to enter into these cooperative agreements, we think the purpose of the authorization was to avoid duplication and provide a smooth-working coordination with the voluntary inspection program of the Federal Government, and at the same time carry out the mandatory State inspections.

We do not think that the Legislature intended that if for some reason it became impossible to consummate such

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cooperative agreements or if, for example, the Federal Government should not be able to offer its inspection services, that the whole mandatory State inspection program provided for by these statutes should crumble and fall. The history of such inspection programs, the expressly stated purpose of each of these statutes, the emergency clause of each bill under which the same became law, and the substantive portions of these statutes after eliminating all references to cooperative agreements, are compelling evidence that the Legislature intended that the mandatory State inspections provided for were to continue in force even in the absence of a cooperative agreement.

The fixing of the amount and the handling and disbursing of contributions from those using the inspection, classification, and grading services must be considered in the light of this legislative intent that the program was not to fail in the absence of a cooperative agreement. Each of these statutes provide:

" . . . it is further provided that the Commissioner may, in his discretion, adopt rules and regulations relating to such inspection contributions which will, in effect, adopt the financing plan provided for under the Cooperative Agreement. . . ." (Emphasis added)

It is thus apparent, we think that the Legislature did not intend to bind the Commissioner to acceptance of the provisions of any cooperative agreement with respect to inspection contributions but rather that the Commissioner should exercise his discretion and, if appropriate or necessary, adopt such rules and regulations relating to contributions as he deemed necessary to the efficient and effective operation and enforcement of the statutes under consideration.

In addition, it is a well established rule of construction that:

" . . . When a statute commands or grants anything, it impliedly authorizes whatever is necessary for executing its commands or whatever is indispensable to the enjoyment or exercise of the grant. Thus a statutory grant of an express power carries with it, by implication, every incidental power that is necessary and proper to the execution of the power expressly granted." 39 Tex.Jur.187, Statutes, Sec. 99.

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The statutes having expressly given to the Commissioner of Agriculture of Texas the power, duty, and responsibility to implement and enforce the provisions of the statutes under consideration and the power to promulgate rules and regulations necessary to the effective and efficient operation of the mandatory State inspection program, we think he is impliedly authorized to establish the necessary rules and regulations for assessment, collecting, handling, and disbursement of contributions from those using the State inspection services, subject, however, to the proviso in each of the statutes that the amount of contribution shall be fixed as nearly as possible with reference to the cost of maintaining the expenses of inspecting and grading these products but that in no event is the contribution to exceed the maximum rate provided in each of these statutes. Such incidental power and authority is, in our opinion, necessary and proper to the execution of the power expressly granted.

Both of your questions are answered in the affirmative.

Yours very truly,

JOHN BEN SHEPPERD
Attorney General of Texas

By s/ James N. Castleberry, Jr.
Assistant

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