

actuary, which is required to accumulate reserve for such pensions, such reserves to be not less than the aggregate reserves which would be accumulated by the setting aside of a level annual amount over his assumed period of membership service with respect to each individual to whom such pension has been credited.

* * *

"The amounts necessary for prior service pensions and employer's membership pensions shall be submitted to the Budget Committee as one item, 'Public Employes' Benefit Fund,' and the requests for administrative expense shall be submitted as operating expenses of other state departments are submitted."

From the foregoing, it is clear that there is no provision in the supplemental statute as to teachers becoming members of the Public Employes' Retirement Fund, nor in the general statutes above referred to as the Public Employes' Retirement Fund, which requires the Elkhart City School Corporation, the former employer, to pay to the Public Employes' Retirement Fund any sums of money for prior service of said teacher, on her becoming a member of the Public Employes' Retirement Fund. Since no such provision is made, we are not authorized to read into the Act such a requirement, and I am, therefore, of the opinion the Public Employes' Retirement Fund would have no recourse for billing said political subdivision of the State of Indiana for such matching funds based on prior service of said teacher.

OFFICIAL OPINION NO. 28

April 14, 1954

Dr. F. W. Quackenbush
State Chemist and Seed Commissioner
Department of Agricultural Chemistry
Purdue University
Lafayette, Indiana

Dear Mr. Quackenbush:

This is in reply to your letter in which you requested an Official Opinion as to the following:

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May a fertilizer company which has been issued a permit to use the reporting system in lieu of attachment of State Chemist tags be given credit for returned tags which the company purchased more than two years before the issuance of the permit?

One of the primary rules of statutory construction is "*expressio unius est exclusio alterius.*" *Tucker v. State* (1941), 218 Ind. 614, 35 N. E. (2d) 270. By virtue of this rule of construction, a refund either for cash or credit may be secured only within the terms and the procedure as set out in the statutes. *Spring Valley Coal Co. v. State* (1926), 198 Ind. 620, 154 N. E. 380. Note should be taken that the fertilizer law prior to 1953 contained no provision for a refund or credit.

The "Commercial Fertilizer Law of 1953" is found in the Acts of 1953, Ch. 30, same being Burns' Indiana Statutes (1950 Repl., 1953 Supp.), Sections 15-1007 to 15-1022. The sections of this Act pertinent to your question may be summarized as follows:

Section 4 (a) provides that each grade of each brand of commercial fertilizer shall be registered with the State Chemist before being offered for sale, sold or distributed in this state. Registration is annual and expires on June 30th of each year.

Section 6 (a) provides that all fees collected by the State Chemist under this Act are to be paid into the Treasury of the Purdue University Agricultural Experiment Station, Board of Control of which shall expend the same, on proper voucher to be filed with the Auditor of the State in meeting all necessary expenses in carrying out the provisions of this Act.

Section 6 (b) provides that payment of the inspection is evidenced by affixing an official tag or label to each package of commercial fertilizer offered for sale, sold or distributed in the state, or in case of bulk fertilizer, by furnishing with an invoice a sufficient number of tags or labels to cover the net weight of the fertilizer.

Unused tags or labels remaining in the possession of the distributor at the end of a season may be used in another season or may be returned to the State Chemist for credit, providing the distributor or his successor pays the cost of printing and handling on all tags or labels returned.

A distributor or his successor may return for credit, during the month of June each year, any unused tags or labels which were printed during the preceding twelve (12) months.

When a distributor is granted a permit to report the tonnage of commercial fertilizer sold and to pay the inspection fee in lieu of furnishing official tags or labels under paragraph 6 (c), below, he may return for credit, within sixty (60) days after issuance of permit, all unused tags or labels printed during the two-year period immediately prior to the time of issuing such permit.

Section 6 (c) provides for the granting of a permit to distributors to report the tonnage of commercial fertilizer sold and pay the inspection fee on the basis of said report in lieu of affixing official tags or labels as required above.

It is clear that the purpose of this Act is to require distributors of fertilizer in this state to register a guaranteed analysis of their product with the State Chemist, and to provide for the inspection of fertilizer which is distributed in this state for the purpose of determining that it conforms to its registration.

An inspection fee on a tonnage basis is provided for in order to defray the expenses incurred in administering the Act, payment of which may be evidenced by tags, issued in various weight denominations and sold at the rate of twenty-five cents (25¢) per ton, which tags are affixed to packages of fertilizer.

It has generally been held that a state has authority to assess or impose a reasonable fee or charge for the cost of administering such an inspection law as an incident of the right to enact and enforce such a law.

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In the case of Patapsco Guano Co. v. North Carolina (1898), 171 U. S. 345, 18 S. Ct. 862, 43 L. ed. 191, a North Carolina Fertilizer Inspection law similar to Chapter 30 of the Acts of 1953 which imposed an inspection fee of twenty-five cents (25¢) per ton was upheld by the United States Supreme Court. The Court said at page 361 of its opinion that:

"The act * * * must be regarded, then, as an Act providing for the inspection of fertilizers and fertilizing materials in order to prevent the practice of imposition on the people of the State, and the charge of twenty-five cents per ton as intended merely to defray the cost of such inspection. It being competent for the State to pass laws of this character, does the requirement of inspection and payment of its cost bring the act into collision with the commercial power vested in Congress? Clearly this cannot be so as to foreign commerce, for clause two of section ten of article one expressly recognizes the validity of state inspection laws, and allows the collection of the amounts necessary for their execution; and we think the same principle must apply to interstate commerce."

You will note that Section 6 (b), *supra*, provides that unused tags or labels remaining in the possession of a distributor at the end of a season may be used in another season or may be returned to the State Chemist for credit, providing the distributor or his successor pays the cost of printing and handling on all tags or labels returned, and that a distributor or his successor may return for credit, during the month of June, each year, any unused tags or labels which were printed during the preceding twelve month period.

Pursuant to Section 6 (b) of Chapter 30, *supra*, a distributor or his successor may return for credit, during the month of June of each year, any unused tags or labels which were printed during the period of the preceding twelve months and the State Chemist can then legally make a cash refund to a fertilizer company which no longer has any means to use any other form of credit which may be allowed for unused tags or labels returned to the State Chemist, which unused tags or labels were printed during the preceding twelve months pro-

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vided that the distributor or his successor pays the cost of printing and handling on all tags or labels returned.

It is therefore my opinion that a fertilizer company which has been issued a permit to use the reporting system in lieu of attachment of State Chemist tags cannot be given credit for returned tags which the company purchased more than two years prior to the issuance of the permit but which tags were not used.

OFFICIAL OPINION NO. 29

April 20, 1954

Honorable John W. Peters
Treasurer of State
State House
Indianapolis, Indiana

Dear Mr. Peters:

Your letter of March 19, 1954, has been received and reads as follows:

"I have a request from the Citizens National Bank of Evansville, Indiana, in regard to deposits from the State Hospital at Evansville as to whether the bank is required to list the deposits for the Public Deposit Insurance Fund. These are not funds that belong to the State of Indiana, but are monies belonging to the patients. These funds are held in trust by the superintendent of the hospital."

The Acts of 1937, Ch. 3, which provides for the "Public Deposits Insurance Fund" and its purpose, is entitled "An act concerning public funds." Its coverage is governed by its own definition of the term "public funds." In defining the term "public funds," Acts of 1937, Ch. 3, Sec. 1 (e), as found in Burns' Indiana Statutes (1951 Repl.), Section 61-622 (e) states that such term

"* * * shall not mean nor include funds coming into the possession of any public officer which are not impressed with a public interest nor designed for a public use."