

1953 O. A. G.

Court, for a member of the legislature to serve as a member of the Indiana State Fair Board.”

Therefore, it is my opinion that a member of the legislature may not serve on the State Fair Board without resigning from the legislature.

OFFICIAL OPINION NO. 97

October 27, 1953.

Mr. F. W. Quackenbush,
Indiana State Chemist and Seed Commissioner,
Agricultural Experiment Station,
Purdue University,
Lafayette, Indiana.

Dear Sir:

Your letter of August 28, 1953 has been received and in part reads as follows:

“I request your official opinion concerning the legality of ‘custom mixing’ of fertilizer under the Indiana Fertilizer Law of 1953 (House Enrolled Act Number 65).

“Specifically I request your answer to the following question: ‘If a farmer places with a fertilizer distributor an order for fertilizer materials (for example, 2,000 lbs. of super-phosphate and 1,000 lbs. of muriate of potash) and asks that the materials be mixed or bulked together into a truck (owned either by the farmer, the distributor or a commercial trucker) for delivery, must the distributor have registered as a mixed fertilizer the product he delivers and must he furnish a label or statement of the guaranteed analysis of the mixture, or can he legally furnish the farmer only a statement of the number of pounds and guaranteed analysis of each of the registered fertilizer materials which were put into the mixture delivered?’

“The following information would seem to be pertinent and may be useful to you:

“(1) It is anticipated that the farmer may place his order in various ways, by written request, in person verbally, or by phone. In any case it is expected he would not be present to see the materials mixed and since distribution by spreading truck would involve no warehousing of the mixture, the farmer would not examine either the materials or the mixture prior to the spreading on the soil.

“(2) The law provides for inspection and analysis of fertilizers which are sold or distributed. Our inspectors encountering trucks during delivery and spreading will, of course, encounter only the mixtures. Since the original materials will have lost their identity, any samples taken for analysis will be of the mixtures.

“(3) Sampling of ingredients or materials in the hands of the distributor before mixing is inadequate as a means of determining the composition of the product delivered. Since a distributor usually has on hand various types of materials of different strength and availability to plants (e.g. 18% superphosphate, 20% superphosphate, 40% superphosphate, and rock phosphate) the substitution of materials having lesser value than those ordered could become a temptation if the final product is not to be guaranteed with respect to composition.

“(4) If a ‘custom mixer’ of fertilizers can distribute a mixture and yet furnish a guarantee only for the materials which went into the mixture, then it would also seem possible for the established manufacturers of mixed fertilizer industry to abandon their present guarantees and likewise bill the purchaser for materials. One would expect this to be the next step if custom mixing, as indicated above, becomes permissible under the fertilizer law.”

The “Fertilizer Law of 1953” is Section 15-1007 *et seq.* Burns’ Indiana Statutes Annotated (1953 Supp.), same being Chapter 30, Acts of 1953. Section 2 of said Act, same being Section 15-1008, Burns’ Indiana Statutes Annotated (1953 Supp.) abolishes the office of state chemist and re-creates said office.

Section 3 of said Act, same being Section 15-1009, Burns' Indiana Statutes Annotated (1953 Supp.) provides as follows:

"SEC. 3. When used in this Act: (a) The term 'fertilizer material' means any substance containing nitrogen, phosphoric acid, potash, or any recognized plant food element or compound which is used primarily for its plant food content or for compounding mixed fertilizers, except unmanipulated animal and vegetable manures.

"(b) The term 'mixed fertilizer' means any combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth.

"(c) The term 'commercial fertilizer' includes mixed fertilizer and/or fertilizer materials, except non-processed barnyard manure, marl, lime, wood ashes and plaster.

"(d) The term 'brand' means a term, design or trade mark used in connection with one or several grades of fertilizer.

"(e) The term 'grade' means the minimum percentage of total nitrogen, available phosphoric acid (P₂O₅) and soluble potash (K₂O) stated in the order given in this definition and, when applied to mixed fertilizers, shall be in whole numbers only: Provided, That the state chemist may permit fractional numbers when additional plant food elements or other additives, referred to in Section 4 hereof, are added.

"(f) The term 'official sample' means any sample of commercial fertilizer taken by the state chemist or his agent.

"(g) The term 'ton' means a net weight of two thousand pounds avoirdupois.

"(h) The term 'percent' or 'percentage' means the percentage by weight.

"(i) The term 'person' includes individual, partnership, association, firm and corporation.

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“(j) The term ‘distributor’ means any person who offers for sale, sells, barter, or otherwise supplies commercial fertilizers.

“(k) The term ‘sell’ or ‘sale’ includes exchange.

“(l) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.”

Section 4 of said Act, same being Section 15-1010, Burns’ Indiana Statutes Annotated (1953 Supp.) provides as follows:

“SEC. 4. (a) Each grade of each brand of commercial fertilizer shall be registered before being offered for sale, sold or distributed in this State. Registration shall be made annually and shall expire on June 30 of each year. All applications for registration shall be submitted to the state chemist on forms furnished by him, and shall be accompanied by a fee of \$5.00 for each grade of each brand. Upon approval by the state chemist a copy of the registration shall be furnished to the applicant on request. The application shall include the following information in the following order:

“(1) The name and address of the person registering the fertilizer.

“(2) The brand and grade.

“(3) The guaranteed analysis showing the minimum percentage of plant food claimed in the following order and form:

Total Nitrogen — percent

Available Phosphoric Acid (P_2O_5)..... — percent

Soluble Potash (K_2O)..... — percent

Unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphoric acid, and the degree of fineness. In the case of bone, tankage, and other natural organic phosphate materials, only the total phosphoric acid need be guaranteed. Additional plant food elements or other additives, determinable by chemical methods, may be guar-

anted only by permission of the state chemist who shall grant such permission only if he shall determine that the granting of such permission would not constitute a misrepresentation and is correct with the advice of the director of the Purdue University Agricultural Experiment Station. When any such additional plant foods are claimed, they shall be included in the guarantee in the form of the element, and shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the state chemist.

“(b) A distributor shall not be required to register any brand of commercial fertilizer which is already registered under this Act by another person.

“(c) The plant food content of each and every grade or brand of commercial fertilizer must remain uniform for the period of registration, and, in no case, even at a subsequent registration, shall the percentage of any guaranteed plant food element be changed in such a manner that the crop-producing quality of the commercial fertilizer is lowered.”

Section 5 of said Act, same being Section 15-1011, Burns' Indiana Statutes Annotated (1953 Supp.) is as follows:

“SEC. 5. (a) Any commercial fertilizer offered for sale or sold or distributed in this State in bags or other containers shall have placed on or affixed to the container, in written or printed form, the net weight and the information required by items 1, 2, and 3 of paragraph (a) of Section 4, either (1) on tags affixed to the end of the package between the ears and/or on the sewed end, or (2) directly on the package.

“(b) If distributed in bulk, a written or printed statement of the weight and the information required by items 1, 2 and 3 of paragraph (a) of Section 4, shall accompany delivery and be supplied to the purchaser at time of delivery.”

Section 6 of said Act, same being Section 15-1012, Burns' Indiana Statutes Annotated (1953 Supp.) provides for certain

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inspection fees of the state chemist for commercial fertilizer to be evidenced by official tags and labels when offered for sale, sold or distributed in this state and "in the case of bulk fertilizer, by furnishing with the invoice a sufficient number of official tags or labels to cover the net weight of the fertilizer." These are furnished by all distributors except on special permit from the state chemist in case of special application for tonnage sales.

Section 7 of said Act, same being Section 15-1013, Burns' Indiana Statutes Annotated (1953 Supp.) in part reads as follows:

"SEC. 7. (a) It shall be the duty of the state chemist, who may act through his authorized agent, to sample, inspect, make analysis of, and test commercial fertilizers distributed within this State at time and place and to such an extent as he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this Act. The state chemist, individually, or through his agent, is authorized to enter upon any public or private premises during regular business hours in order to have access to commercial fertilizers and records relating to their transportation and sale, subject to the provisions of this Act and the rules and regulations pertaining thereto.

"(b) The methods of sampling and analysis shall be those adopted by the state chemist from sources such as those of the Association of Official Agricultural Chemists. In cases of dispute, the Association of Official Agricultural Chemists' methods shall prevail if such are available.

"(c) The state chemist, in determining for administrative purposes whether any commercial fertilizer is deficient in plant foods, shall be guided solely by the official sample as defined in paragraph (f) of Section 3, and obtained and analyzed as provided for in paragraph (b) of Section 7."

Other sections of said Act contain various means for the enforcement of the statute including criminal penalties.

Statutes must be construed as a whole in order to determine the legislative intent.

Snider v. State *ex rel.* Leap (1934), 206 Ind. 474, 478, 190 N. E. 181.

It has been held that courts will look to the general purpose and scope of the statute to determine the legislative intent.

City of Indianapolis v. Evans (1940), 216 Ind. 555, 561, 25 N. E. (2d) 776.

When the above statute is considered in the light of the foregoing authorities, it is clear that the intent and purpose of the legislature in its enactment was to require distributors on sale of mixed commercial fertilizers sold or distributed to the public to follow the procedure outlined in the statute so as to make available to the state chemist and his agents an effective method of inspection of such fertilizers at the time it is registered, and for thereafter making available to him spot inspections even after sale and while in the hands of the purchaser for the purpose of comparison with the registered formula. This is clear from the provisions of Section 16 of the Act, same being Section 15-1022, Burns' Indiana Statutes Annotated (1953 Supp.), which only exempts sales or exchanges of commercial fertilizers, to each other, by importers, manufacturers or manipulators who make fertilizer materials for sale, said section reading as follows:

“Sec. 16. Nothing in this Act shall be construed to restrict or avoid sales or exchanges of commercial fertilizers to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale, or as preventing the free and unrestricted shipments of commercial fertilizers to manufacturers or manipulators who have registered their brands as required by the provisions of this Act.”

A construction of the Act permitting the practice set forth in your question would clearly violate the provisions of Section 5 (b) of said Act, *supra*, which requires such fertilizer if distributed in bulk to contain a written or printed statement of the weight and the information required by items 1, 2 and 3 of Paragraph (a) of Section 4 of the Act, *supra*, which latter

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provision among other things requires that the following information is included: "the guaranteed analysis showing the minimum percentage of plant food contained in the following form:

Total Nitrogen — percent
Available Phosphoric Acid (P₂O₅) — percent
Soluble Potash (K₂O) — percent"

It will also make impossible a comparison of the contents of the mixed fertilizer without official sample required by Section 7 (c) of the Act, *supra*. Since Section 5 (b) of the Act requires a printed or written statement of the information required by items 1, 2 and 3 of Paragraph (a), Section 4 of the Act "*if distributed in bulk,*" I am of the opinion that the word "distributed" contemplates a *bona fide* sale together with actual possession by the buyer, or his agent, rather than a mere constructive delivery to the buyer. Therefore, if the ingredients are properly labeled and actual possession is given to the buyer, he could then have the ingredients mixed by anyone of his choice including the seller, and, of course, such mixture could not thereafter be resold.

If "custom mixing" by the seller only upon constructive delivery to the buyer were permitted, this would defeat the purpose of the Act, and I am therefore of the opinion that the referred to practice of "custom mixing" of fertilizer by a distributor on sale and constructive delivery to the purchaser violates the provisions of the Indiana Fertilizer Law of 1953 but that such mixing is permitted after actual delivery to the buyer.