

I am further of the opinion that when a teacher retires on temporary or permanent disability it is not necessary for her to continue payments of assessments during such retirement. However, if she becomes temporarily disabled she can elect not to retire but only take a leave of absence, and if she pays her assessments into the fund during such leave of absence for temporary disability she can claim service credit in the fund for such period of time.

It is, therefore, clear that in no event may disability benefits be paid and leave of absence service credits be granted concurrently for teachers having less than thirty (30) years of service credit.

OFFICIAL OPINION NO. 43

May 24, 1948.

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

Dear Mr. Quackenbush:

Your letter of April 13, 1948, has been received in which you desire to know if we wish to supplement our opinion to you of December 2, 1947, same being 1947 Ind. O. A. G., Official Opinion No. 71, in view of the 1939 Federal Seed Act. You specifically desire to know if the seizure provisions of the Indiana Seed Act (Section 15-801, *et seq.* Burns' 1933) may be used to enforce the labeling requirements of seed laws against mail order seed houses which are shipping seeds into this State direct to the consumer without the attachment of official Indiana labels.

This opinion is intended to supplement the foregoing official opinion of December 2, 1947.

In writing the foregoing opinion the 1939 Federal Seed Act was not taken into consideration and therefore should be considered superseded to the extent of any conflict as contained in this supplemental opinion.

Article 1, Section 8 of the Constitution of the United States, Clause 3, empowers Congress "to regulate commerce with

foreign nations, and among the several States, and with the Indian tribes."

Article 6, Clause 2 of the Constitution of the United States also provides;

"This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."

The Federal Seed Act of 1939, found in Title 7, Section 1551, *et seq.* of the Supplement to U. S. C. A., restricts the shipment in interstate commerce of agricultural seeds unless they bear a label giving the information as to kind and quality required by the statute or by the rules duly promulgated by the Secretary of Agriculture of the United States who is charged with the enforcement of the penal and injunctive provisions of the Federal act. It also prohibits the shipment of seeds containing noxious weeds beyond the requirements prescribed by the Secretary of Agriculture and authorizes the seizure and sale thereof, the securing of injunctive relief in the federal courts and provides for fine and imprisonment for violation of its terms and provisions. The duty of inspection of such goods devolves upon said Secretary of Agriculture.

In the case of E. K. Hardison Seed Company v. Jones (Circuit Court of Appeals, Sixth Circuit, May 14, 1945), 149 Federal (2d) 252, in affirming a cease and desist order of the federal court against falsely labeling and shipping agricultural seeds in violation of such federal law, the court on page 253 and 254 of the opinion said:

"Under 7 U. S. C. A., § 1571, the channels of interstate commerce are closed to all agricultural seeds or mixtures thereof for seeding purposes, unless each container bears a label giving information in accordance with rules and regulations promulgated by the statutory administrator showing (a) the percentage of weight of weed seeds including noxious-weed seeds; (b) the kinds of noxious-weed seeds and the rate of occurrence of each, which rate shall be expressed in

accordance with and shall not exceed the rate allowed for shipment, movement or sale of such noxious-weed seeds by the law and regulations of the State into which the seed is offered for transportation or transported, or in accordance with the rules and regulations of the Secretary of Agriculture determining that weeds, other than those designated by State requirement, are noxious; (c) percentage by weight of inert matter; (d) the percentage of germination exclusive of hard seed and also the percentage of hard seed if present."

In the case of Savage v. Jones (1912), 225 U. S. 501 (cited in the foregoing official opinion) the court in determining what was interstate commerce, on page 502 of the opinion said:

"While the State cannot, under cover of exerting its police power, directly regulate or burden interstate commerce, a police regulation which has real relation to the proper protection of the people, and is reasonable in its terms, and does not conflict with any valid act of Congress, is not unconstitutional because it may incidentally affect interstate commerce."

Again on page 533 of the opinion the court further said:

"Is, then, a denial to the State of the exercise of its power for the purposes in question necessarily implied in the Federal statute? For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power. * * *"

In the case of Oregon-Washington Railroad and Navigation Company v. State of Washington (1926), 270 U. S. 87, in which case the State of Washington sought to enforce a quar-

antine against the interstate shipment of alfalfa hay and meal from certain designated localities where it was known such alfalfa products were infected by the alfalfa weevil, and wherein the court restrained the enforcement of such quarantine, the court on page 101 of the opinion said:

"In the relation of the States to the regulation of interstate commerce by Congress there are two fields. There is one in which the State can not interfere at all, even in the silence of Congress. In the other (and this is the one in which the legitimate exercise of the State's police power brings it into contact with interstate commerce so as to affect that commerce), the State may exercise its police power until Congress has by affirmative legislation occupied the field by regulating interstate commerce and so necessarily has excluded state action."

Again on pages 102 and 103 the court continued:

"It follows that, pending the existing legislation of Congress as to quarantine of diseased trees and plants in interstate commerce, the statute of Washington on the subject can not be given application. It is suggested that the States may act in the absence of any action by the Secretary of Agriculture; that it is left to him to allow the States to quarantine, and that if he does not act there is no invalidity in the state action. Such construction as that can not be given to the federal statute. The obligation to act without respect to the States is put directly upon the Secretary of Agriculture whenever quarantine, in his judgment, is necessary. When he does not act, it must be presumed that it is not necessary. With the federal law in force, state action is illegal and unwarranted."

On the question also see:

Cloverleaf Butter Co. v. Patterson, Commissioner of Agriculture and Industries of Alabama (1942), 315 U. S. 148, 162, 167 to 173:

Rice v. Santa Fe Elevator Corp. (1947), 331 U. S. 218; 67 S. Ct. 1146, 1152;
2 Am. Jur., Agriculture, Sec. 33 and cases cited.

From the foregoing references to the Federal Seed Act it is clear the Federal Act occupies the entire field of the Indiana Seed Act (referred to and quoted in the foregoing official opinion), as far as interstate commerce is concerned, and that an enforcement of the Indiana Act on shipments coming into the State in interstate commerce, would necessarily conflict with the provisions of the Federal Act as to labeling, requirement of fixture of stamps, inspection and enforcement of penalties.

I am, therefore, of the opinion the Federal Act controls and is exclusive where direct shipments in interstate commerce to consumer purchases in Indiana are concerned as well as to other shipments into the State to dealers as long as such goods retain their identity as interstate commerce.

However, as pointed out in the case of E. K. Hardison Seed Co. v. Jones, *supra*, the channels of interstate commerce are closed as to seeds that "exceed the rate allowed for shipment, movement or sale of such noxious-weed seeds by the law and regulations of the State into which the seed is offered for transportation or transported." This provides you with an effective means of preventing violation of the State laws by referring such matter to the Secretary of Agriculture of the United States for prosecution in accordance with the Federal Act.

I do not see how the Indiana law can be amended so that it will overcome the effect of the Federal seed law which has in my opinion occupied the field as far as interstate commerce shipments are concerned.

I am herewith returning to you the entire file which you so kindly forwarded me in this matter.