

In Burns 1933 Statutes, Secs. 26-516 and 26-517, we find the sections: First, estimate by officers; and second, specifications of estimates. Under Sec. 26-517, subdivisions "Third" and "Fourth," is found specification authority for including items such as set out in your letter and request.

I conclude, first, that the Acts of 1933 pertaining to the salary of the prosecuting attorney and his deputies in no way prohibits the allowance of the estimate. Second, there appears to be no prohibition to the county council to make appropriations for office expense such as outlined in your letter. Hence the conclusion is that there is an implied, if not a specific, right on the part of the county council to make appropriations for the items stated. It is understood, of course, that all of the items as set out are necessary to the proper functioning of the office of prosecuting attorney, and that no part will be expended otherwise; hence if these items be allowed by the Board of Commissioners and be paid by the Auditor they will be regular expenditures from county funds.

PURDUE UNIVERSITY: Right of State Chemist to make rule authorizing the exchange of unused commercial stock food tags.

January 26, 1937.

Hon. H. R. Kraybill,
State Chemist and Seed Commissioner,
Purdue University,
Agricultural Experiment Station,
Lafayette, Indiana.

Dear Sir:

I have before me your request for an official opinion dated January 25, 1937, calling attention to chapter 206 of the Acts of 1907, page 354, as amended in 1909, Acts of 1909, page 106, and as amended in 1933, Acts of 1933, page 904, and submitting the question as to whether you as State Chemist are authorized to issue the following regulation:

"Effective January 1, 1938, during the month of January only of each year, the State Chemist will exchange, for new tags, all unused feeding stuffs tags issued during the preceding calendar year; provided, the registrant pays for the cost of printing and

handling charges of the tags returned to the State Chemist."

As authority for the issuance of such a regulation, you call attention to section 9 of the Act which empowers the State Chemist to prescribe and enforce such rules and regulations relating to concentrated commercial feeding stuff as he may deem necessary to carry into effect the full intent and meaning of the Act.

The authority to make rules and regulations as above provided, however, goes only to the making of such rules and regulations as are consistent with the Act. In other words, you would have no authority by virtue of the provision of section 9 to make a rule upon a subject covered by the Act which was inconsistent with the provision of the Act itself.

This department in an opinion issued by a predecessor on June 2, 1926, held that there was no authority in the law which authorized the State Chemist to take back labels or stamps sold by him or which authorized him to trade new stamps for old and unused ones. The 1933 amendment of the Act referred to does not operate to change the Act as bearing upon the above question and if the construction given on June 2, 1926, is correct as of that date, it would be correct now. I have examined the Act carefully and from such examination I see no reason for changing the previous opinion above referred to. (See: Opinions of Attorney General, 1925-1926, page 770.)

It follows that if the opinion is a correct interpretation of the Act, you would not be authorized to change it by a rule or regulation. In my opinion you have no authority to issue the rule or regulation above referred to.

FARM, INDIANA STATE: Prison and convict made goods in interstate commerce. Responsibility for transportation.

Mr. Ralph Howard,
Superintendent, Indiana State Farm,
R. R. No. 2,
Greencastle, Indiana.

February 1, 1937.

Dear Sir:

This is in response to the request of your board of trustees for an opinion as to the liability for institution products sold to be shipped out of the State of Indiana. You say: