

Free Employment Offices—Power of Commissioner of Agriculture to Establish.

Chapter 216 of 17th Session Laws does not give the Commissioner of Agriculture power to establish free employment offices in cities of the first and second class by executive order.

Chester C. Davis, Esq.,
Commissioner of Agriculture,
Helena, Montana.

My dear Mr. Davis:

You have requested my opinion as to whether Chapter 216 of the 17th Session Laws gives you power and authority to compel first and second class cities of the State to maintain free employment offices, as provided in Section 57 of said Chapter 216.

Section 56 of said chapter makes it the duty of the Division of Labor and Publicity of the Department of Agriculture to administer all the laws of the State relative to free employment offices.

The original law providing for free employment offices was Section 288 of the Revised Codes of 1907, which gave any incorporated city authority to establish such an office at the expense of the city. The Twelfth Legislative Assembly, by Chapter 15, amended this section by making it the duty of the Council of any incorporated city of the first or second class to establish such an office, and leaving it optional to other incorporated cities.

Chapter 216 of the 17th Session Laws repealed Chapter 15 of the 12th Session and the former law on the subject, substituting Section 57 of Chapter 216, 17th Session Laws, therefor, making it the duty of first and second class cities to maintain such offices and leaving it optional to other cities. Authority in your Department to compel a city to establish and maintain such an office, if it exists, must therefore be found in Chapter 216 of the Laws of 1921. Section 70 of Chapter 216, *supra*, provides a penalty for violation of any of the

provisions of Chapter 216 or for failure to comply with any order of the Department of Agriculture, the Commissioner thereof or any of his lawfully constituted agents, providing such order be made in pursuance of the authority granted in said Chapter 216. The head of the Division of Labor and Publicity is a lawfully constituted agent of the Department of Agriculture, Labor and Industry, and under Section 56, supra, is charged with administering the laws of the State relative to free employment offices, which are all contained in Section 57, supra. He, therefore, has authority to give such orders as are contemplated by Section 70, which would seem to include the authority to order a city to comply with the duty enjoined by Section 57 of the Act. Resort to the courts would be necessary to enforce the order in case it is not complied with.

If your Department desires to take the initiative in establishing these employment offices in the cities of the State, it will be proper for you to issue an official order to the City Council for that purpose, and follow it up with mandamus proceedings in case of refusal to obey the order, or with proceedings under Section 70 of Chapter 216.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.