

Stock Inspector, Employment of by Boards of County Commissioners. Stock Inspector, not an Officer. Stock Inspector, Qualifications of.

A stock inspector employed by a board of county commissioners, under authority of chapter 61, laws of 1909, is not an officer but an employe of the county, and is not required to furnish bonds or take an oath of office.

Helena, Montana, October 27, 1909.

Hon. W. L. Ford,
County Attorney,
White Sulphur Springs, Montana.

Dear Sir:—

I am in receipt of your letter of October 25, wherein you ask my opinion as to the qualifications necessary for a stock inspector employed by the board of county commissioners pursuant to chapter 61, laws of 1909.

I am of the opinion that a stock inspector appointed under this law is not an officer of the state or county, within the legal definition of that term, and that his position is not an office. There is a recognized distinction drawn by the courts between "office" and "employment."

In 29 Cyc., page 1366, there is found a discussion of this distinction, and a collection of authorities, wherein the courts have recognized the difference. Generally speaking it may be said that the term "office" embraces the idea of tenure, duration, emoluments and duties, and that while an office is based upon some provision of law, which usually provides for the tenure and the compensation, as well as the powers and duties, an employment is based upon a contract entered into by the government or some board or officer thereof in conformity with legislative enactment and an employe.

Section 2, chapter 61, laws of 1909, does not establish the office of stock inspector; does not provide a fixed compensation, except that it limits the maximum which may be paid, and does not fix any particular term as to tenure of office, but provides specifically:

"Whenever such stock inspector is so employed, the employment shall be only for the case or cases under investigation, and his compensation shall be at the rate of not to exceed the sum of \$7.50 per day."

And also provides that during the existence of such appointment he shall be vested with the same police power and authority as the sheriff, within the limitation of the particular purpose for which he is appointed.

I take it, therefore, that the county commissioners might employ any person who, in their judgment, is a proper person for the performance of the particular duties imposed upon him, and that they might agree with him as to the compensation to be paid him, which might be any sum not in excess of \$7.50 per diem, together with necessary expenses, and that such employe would not come within the provisions of section 7, of article 9 of the state constitution, which provides, generally, that no person shall be elected or appointed to any office in this state who is not a citizen of the United States and who shall not have resided in the state at least one year before his election or appointment.

I note your request with regard to withholding this opinion from publication, and will act accordingly.

Very truly yours,

ALBERT J. GALEN,

Attorney General.