

Opinion No. 227**Commissioner of Agriculture, Power of
—Eggs, Inspection of—Rules
and Regulations.**

HELD: Where the legislature remitted license fees to Department of Agriculture with power to disburse same for enforcement of egg-grading law, the granting of the power to the Commissioner of Agriculture to make such rules and regulations as may be necessary to enforce the act does not grant power to levy a charge against dealers for enforcement purposes.

June 1, 1933.

You have submitted the following: "Would it be permissible for the Commissioner of Agriculture to definitely state in a regulation the charge of five cents, or three cents, per case for the inspection of eggs?" You have called attention to Section 10 of Chapter 189, Laws of 1931, and state that the license fees do not bring in enough money to properly enforce the act. You have stated further that some of the dealers have suggested that they would be willing to pay a certain tax, say 5c per case, for all the eggs handled by them for the purpose of raising revenue to put on inspectors enough to enforce the act.

Section 1 of Chapter 189, Laws of 1931, provides certain license fees for

dealers buying eggs for re-sale and dealers buying eggs for re-sale at wholesale, the fee for the former being \$5.00 and for the latter \$20.00. Section 2 provides: "All license fees shall be remitted to the Department of Agriculture, Dairy Division, **who shall disburse them for the enforcement of this Act as provided in Section 10.**" Section 10, to which you call attention, reads as follows: "It shall be the duty of the Commissioner of Agriculture to enforce the provisions of this Act and to make such rules and regulations as may be necessary for the enforcement of this Act."

Assuming that the legislature has the power to confer upon the Commissioner of Agriculture the authority to make the charge which you have stated in your question, it is evident that such power is not expressly conferred. The question arises whether such authority may be implied from the language used. Inasmuch as the legislature has expressly provided that the license fees shall be remitted to the Department of Agriculture, Dairy Division, who shall disburse them for the enforcement of the Act, and has thereby provided a fund for the enforcement of the Act, it excludes the idea of conferring upon the Commissioner of Agriculture the power of making additional charges. In other words, from the language used there is no clear purpose on the part of the legislature to grant such power to the Commissioner of Agriculture. The power to make rules and regulations as used in this Act, does not necessarily imply the power to collect a fee from egg dealers but rather the power to make such reasonable orders, rules and regulations as will obtain uniformity and fairness, or some other necessary requirement in the enforcement of the Act.

The power to levy a charge should not be inferred unless the intention of the legislature is clearly shown. In 59 C. J. 1106, it is said: "The powers given by a statute to subordinate local authorities are strictly construed, and every reasonable doubt as to the existence of a particular power is resolved against its existence. Statutes passed in the exercise of the police power of the state should be strictly construed,
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The power of the legislature to con-

fer such authority upon the Commissioner of Agriculture might well be questioned but it is not necessary to consider the same. See 12 C. J. 911, Section 420, as well as several constitutional provisions.