

## No. 74

**COMMISSIONER OF AGRICULTURE, Bond Not  
Required When**

**Held:** Where, under Chapter 27 of the Laws of 1929, no moneys are available or appropriated to pay the additional bond required of the Commissioner of Agriculture, and no operations are being conducted under such act, such bond need not be furnished.

April 7, 1941.

Honorable Sam C. Ford  
Governor of the State of Montana  
Capitol Building  
Helena, Montana

Dear Governor Ford:

You state that, due to activities of the Federal Government, operations under Sections 3592.10 to 3592.30, inclusive, of the Revised Codes of Montana, 1935 (Chapter 27 of the Laws of 1929) have ceased. You further state there is no money in the fund set up under Section 3592.30 and there have been no collectoins into this fund. No appropriation has been made by the Legislature out of any other fund for the administration of the Act.

The question you present is: Must the Commissioner of Agriculture nevertheless furnish the bond required by Section 3592.12?

Section 3592.30 of the Revised Codes of Montana, 1935, provides the general expenses of the Act shall be paid out of grain inspection fees, and Section 3592.12 requires the Commissioner of Agriculture to furnish a surety bond conditioned on the faithful performance of his duties under the Act, "the premium on said bond to be paid as a part of the general expenses of the operation of the Act."

The result is an anomalous situation wherein the Commissioner is required to furnish a bond, the premium is to be paid out of fees collected, and no fees are collected or funds provided to pay the premium.

The State, by creating the operating machinery for the Act, does not bind itself to make appropriations to carry out its purposes. (*Geboski v. Montana Armory Board*, 110 Mont. 487, 103 Pac. (2nd) 679.)

The Department of Agriculture is an agency of the State, and the duties of the Commissioner are clearly defined by statute. In the expenditure of the public moneys, he is strictly limited to the sums appropriated by the Legislature for a given purpose. No discretionary power is vested in him to exceed such appropriation. (*Clas v. State*, 196 Wis. 430, 220 N. W. 185.)

It is impossible to perceive from what funds, other than those provided for under Section 3592.30, such premiums could be paid. There is nothing in the appropriation bills for the Department of Agriculture which even indicates such premium could be paid from other than the particular fund we have described. The premiums obviously cannot be paid from the general fund without appropriation therefor (Article V, Section 34, Montana Constitution) or under the assumption that the Legislature would approve such a procedure at a subsequent session. (*State v. Industrial Commission (Ariz.)*, 99 Pac. (2nd) 88.)

The rule established by statute must be strictly enforced, provided the reason underlying it is present; whenever the reason for it ceases, so does the rule. (*Broadwater v. Kendig, et al.*, 80 Mont. 515, 261 Pac. 264.)

It is my opinion, therefore, that, while such Act still remains in full force and effect, the Commissioner of Agriculture should not be required to furnish the bond specified by Section 3592.12, until such time as operations might resume under the Act, and fees become available under Section 3592.30, from which the bond premium can be paid.

Not only is such result warranted by the law applicable, but inures to the benefit of the taxpayers who pay the costs of state government. The bond premium in this case is substantial. The purpose of the bond is to protect those persons availing themselves of the provisions of the Act. When no persons seek that right, there are no interests to protect.

It may be suggested to the Legislature that, if the Act in question has become legislative "deadwood," it should be repealed.

In any event, the failure to furnish a bond under the conditions outlined cannot affect the right of the Commissioner of Agriculture to proceed in the discharge of his lawful duties. (*Glavey v. United States*, 182 U. S. 595.) The bond is not a qualifying bond. (*Toy v. Voelker, (Mich.)* 262 N. W. 881.)

Very truly yours,

JOHN W. BONNER,  
Attorney General