



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable J. E. McDonald, Commissioner
Department of Agriculture
Austin, Texas

Dear Sir:

Opinion No. O-5014
Re: Under the given facts,
would the Commissioner
of Agriculture be within
his rights to ask the dis-
trict court to grant in-
junction against farmers
in San Augustine County
who are planning to plant
contaminated sweet potatoes?

Your letter and enclosures, in substance, present this situation: that San Augustine and Angelina Counties were formally proclaimed control and eradication zones for the purpose of controlling the sweet potato weevil. The proclamations were issued in 1938, in pursuance of Section 8, of Article 135a-1, V.A.C.S. Without detailing them the proclamations appear on their face to conform with the statutory requirements for notice and hearing.

The proclamations prescribed certain regulations designed to control and eradicate the sweet potato weevil in those counties. The rules pertinent to this inquiry prohibit (a) the planting of potatoes in soil infested with wild plants that are hosts to the weevil or in soil not approved by the Commissioner, (b) the planting of seeds or slips not approved by the Commissioner, and (c) the movement of any infested potatoes from infested fields or houses until approved by a committee acting for the Commissioners' Court.

The rules further provide that if any person fails or refuses to keep his land or premises clean and free of weevils, or fails or refuses to destroy or dispose of weevil infested material, after having been instructed to do so by the Commissioner, then the Commissioner or his agents are authorized to abate the nuisance and destroy the infested material.

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In abating such nuisance the rules provide for application to a court of competent jurisdiction.

A report of the State Leader, Sweet-potato Weevil Control, United States Department of Agriculture, shows that a number of growers, named in his report, are threatening to bed and plant weevil infected seeds and slips in those counties.

On this statement and understanding of the facts you wish to be advised whether your department is entitled to seek injunctive relief under the statutes and regulations.

Section 8 of Article 135a-1, outlines the procedure for invoking the necessary powers to act in this situation. When the necessary steps have been taken then the Commissioner, by rule and regulation, can govern "the circumscribing, control, eradication and extermination of such pest or disease, and thereafter it shall be unlawful for any person to do any act prohibited by such rules and regulations, or refuse to do anything commanded to be done by such rules and regulations."

Section 10 of the statute specifically provides it shall be the duty of the Commissioner to take possession of any infected material moved or transported in violation of the rules and regulations, give notice that they are a nuisance and are to be destroyed. The statute prescribes the manner and form of such notice.

Section 9 of the original Act (V.A.P.C., Art. 1700a-1) is the penal provision and provides that upon conviction the person or persons found guilty "shall be fined in any sum not to exceed One Hundred (\$100.00) Dollars, and each thing, sold or transported, and each act in violation hereof, shall be considered a separate offense."

Now, it is well settled that administrative rules, regulations and general orders adopted in pursuance of statutory authority and otherwise valid "have the same force and effect as ordinary statutory laws enacted by the Legislature." Texarkana & Ft. S. Ry. Co. v. Houston Gas & Fuel Co., (1932)
121 Tex. 594, 51 S. W. (2d) 284, 287.

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On March 17, 1944, in an analogous situation, this department in Opinion No. 0-5795 addressed to Honorable Roger Q. Evans, held that an injunction would lie. A copy of said opinion is enclosed herewith.

Very truly yours

ATTORNEY GENERAL OF TEXAS

David Wuntch
By

David Wuntch
Assistant

DW:db

Enclosure

RECEIVED MAR 23, 1944

W. J. Blackburn
ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY *Swto*
CHAIRMAN