

March 2, 1937

Mr. J. M. Combs
House of Representatives
State House
Phoenix, Arizona

Dear Mr. Combs:

In response to your verbal request for an opinion concerning the constitutionality of House Bills 91 and 99 relative to the Inspection Tax, insofar as it affects interstate commerce; it is our opinion that the state may, in the exercise of their police powers, pass reasonable and non-discriminating laws for the inspection of articles which are properly the subject of inspection, although such laws incidentally affect interstate commerce.

This opinion is based upon the decision of the United States Supreme Court in the case of Patapsco Company vs. Board of Agriculture, reported in 171 U. S. at page 345 and 43, Lawyers Edition 191. In that case, the State of North Carolina passed a statute for the collection of an inspection charge on fertilizer (similar to our House Bill 99) charging 25¢ per ton. The Supreme Court said, in that case, "Where the subject is of wide importance to the community, the consequences of fraudulent practices generally injurious, and the suppression of such frauds matter of public concern, it is within the protective power of the state to intervene. It is apparent that there is no article entering into common use in many of the states, inspection of which is so necessary for the protection of those citizens engaged in agricultural operations, as commercial fertilizers. The object of this law was to protect agriculture interest against low grade fertilizer, which simply imposed the actual cost of inspection."

This case has been followed by the majority of the courts in the United States and it is now well settled that a state statute requiring inspection of property, the subject of interstate commerce, does not violate the commerce clause of the federal constitution we note in 19 A.L.R. at page 166.

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Therefore, for the reasons above stated, it is our opinion that the section of House Bills 91 and 99 providing for an inspection charge on fertilizers and commercial feed, sold or distributed in this state, is not in violation of the commerce clause of the federal constitution.

Very truly yours,

JOE CONWAY
Attorney General

J. M. JOHNSON
Assistant Attorney General

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Special Assistant
Attorney General