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ARIZONA ATTORNEY GENERAL
May 27 1958
Opinion No. 53-83

REQUESTED BY: The Honorable S. Earl Pugh
Arizona State Legislature

OPINION BY: ROBERT MORRISON, The Attorney General

QUESTIONS: 1. Are the livestock inspectors working for the Livestock Board classed as employees or as individual contractors?
2. Are they entitled to the two weeks' vacation set up for State employees?

CONCLUSIONS: 1. Employees.
2. See body of opinion.

We refer first to the statute dealing with the authority to employ livestock inspectors and the method of their appointment. A.R.S. § 24-108 reads as follows:

"§ 24-108. Livestock inspectors and deputies; appointment; petition for appointment; oath; bond

A. The livestock sanitary board may appoint livestock inspectors, and upon petition of not less than five cattlemen, each of whom is the owner of not less than fifty head of livestock in the state, shall appoint an inspector at any locality where there is no appointed and regularly acting inspector.

B. Each inspector appointed shall take the oath of office and give bond to the state in the principal amount of one thousand dollars for the faithful performance of his duties. Each such inspector may appoint deputies to enforce the livestock laws."

Also, referring to livestock inspectors, A.R.S. § 24-268 reads as follows:

"§ 24-268. Inspection fee; waiver by board

A. Inspectors shall be paid an inspection fee of fifteen cents per head by the person in charge of the livestock inspected.

B. If prior to an inspection, application is made to the board in writing for a waiver of the inspection fee and it appears to the satisfaction of the board that the livestock will be moved from

pasture or other feeding ground for a purpose other than slaughter, sale, change of ownership or removal from the state, the board may waive the inspection fee."

However, pursuant to the provisions of the Financial Code of Arizona, A.R.S. § 35-181, the fees paid to the inspectors under this section are not retained by them but are transmitted to the livestock sanitary board, which in turn transmits them to the state treasurer. The salaries of livestock inspectors are paid pursuant to appropriations provided by the legislature from the State General Fund.

A.R.S. § 24-103, relating to the organization and employees of the livestock sanitary board, reads in part as follows:

"§ 24-103. Organization and employees
The board shall:

* * * * *

4. Appoint inspectors and deputies to accomplish the objects and purposes of the board. The inspectors and deputies shall be under the direction and control of the board." (Emphasis supplied)

From a reading of the last sentence of this subsection, it is apparent that the livestock sanitary board inspectors and deputies are to be classed as employees of said board.

In answer to your second question, it should first be pointed out that there is no statute which gives vacation time to state employees. A state department or agency may, however, adopt rules and regulations which allow vacations. In prior opinions No. 55-159, No. 56-88 and No. 58-51 this office has said that, if a certain class of employees within a department are granted vacations by a state administrative agency, then all of the department's employees of that class having the same type of contract of employment are entitled to vacations also. However, if a certain class of employees are not granted vacations by the administrative agency, they are not entitled to vacations even though another class of employees of the same or a similar state agency are so entitled.

Therefore, it is the opinion of this office that whether livestock inspectors are allowed vacations or not is dependent upon the rules of the agency involved.

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