

IOWA STATE DEPARTMENT OF AGRICULTURE ITS ADMINISTRATION

The citizens of a nation or a State are primarily interested in *what* government does for them; *how* government performs its functions is not ordinarily of so much concern. It is, however, obvious that in a democracy the citizens should know something of the machinery of government as well as its purpose.

A State government is made up of many agencies, none of which operates in a vacuum, since the scope of any particular department is defined to some extent by its relation to other agencies of government. Such agencies grow by accretion of duties, are pruned at the will of the legislators, and their shapes are affected by other agencies of government.

The administrative functions of the State Department of Agriculture¹ are, for example, controlled, regulated, restricted, or promoted by various agencies of Iowa government — voters, General Assembly, Governor and Comptroller, Executive Council, Auditor, Treasurer, and Attorney General. The Department is also subject to the jurisdiction of various courts, and last but not least it must perform some of its duties under the supervision of the United States Department of Agriculture.

Since the Secretary of Agriculture is elected, there is a close relationship between the Department of Agriculture and the voters who may return a man to office or choose a new Secretary. In many elections, however, the election

¹ An article on the history of this Department, with the title *Iowa State Department of Agriculture Its Evolution*, by John Henry Haefner, was published in the April, 1943, number of THE IOWA JOURNAL OF HISTORY AND POLITICS.

follows political trends and is not a considered judgment on the work or policies of the Secretary.

Some of the most important controls affecting the Iowa Department of Agriculture are applied by the General Assembly of Iowa which created the Department of Agriculture and can abolish it at any time. The powers and functions exercised by the Department are granted to it by the legislature which makes appropriations for the work and may fix the salaries to be paid. The legislature can also direct the activities of the Department by requiring the submission of reports. It is probable that the General Assembly has power to remove the Secretary, a publicly elected official, by impeachment. This technique is seldom used.

The General Assembly of Iowa has granted to the Governor "direct and effective" financial supervision over all departments and establishments of the State. The Governor can make, and in the past has made, recommendations to the General Assembly to reorganize the Department of Agriculture in the interest of increased economy and efficiency. He may, with the concurrence of the Executive Council, reduce quarterly allotments of funds if the revenues of the State are insufficient to pay all appropriations in full, but the reduction in allotments must be prorated equally to all departments on the basis of the appropriations made to them.² This power has never been exercised in Iowa.

Whenever he considers that the public service requires such action, the Governor is authorized to appoint a commission of three accountants to examine the records of any State agency expending public funds. If he finds from the report of this commission that there are grounds for removal, he shall lay the report before the Attorney General

² *Code of 1939*, Secs. 84.03, 84.24, 84.28.

for action by the district court or suspend the officer from the exercise of his office until impeachment charges can be prepared. Furthermore, the Governor is empowered to appoint a Secretary of Agriculture if there is a vacancy because of failure to elect, failure to qualify, conviction of the incumbent for an infamous crime or any public offense involving violation of the oath of office, removal, resignation, or death.³

A thorough survey of the relationships existing between the Department of Agriculture and the Governor of Iowa fails to reveal much evidence that the Governor exercises strong administrative control over the Department. The tradition of independent and direct responsibility to the electorate prevents subordination to the chief executive of the State.

The Comptroller of Iowa, acting largely as an agent of the Governor, performs certain functions which are usually associated directly with this office. The General Assembly has empowered the Comptroller to prescribe the forms and systems of accounts and financial reports used by the Department of Agriculture. When requested to do so by the Governor, the Executive Council, or the General Assembly, the Comptroller may investigate the organization, activities, and method of procedure used by the Department in the conduct of its business. Furthermore, the Comptroller has the power to pre-audit all its expenditures and all formal contracts entered into by the Department must be certified by him. The Department of Agriculture must make such financial reports as are required by the Comp-

³ *Code of 1939*, Secs. 1119, 1123, 1146, 1152. The office of Secretary of Agriculture was created by statute and is not included in the Constitution. It is, therefore, generally agreed that the Secretary can be removed for cause by the courts. It seems reasonable also that he could be removed by impeachment as one of the "other State officers" mentioned in Sec. 20 of Article III of the Constitution.

troller and the Comptroller oversees the payment to the Treasurer of all collections and receipts received by the Department and approves all warrants for payments by the Treasurer.

In addition to these relationships, others of less importance exist. The Executive Council, consisting of the Governor, the Secretary of State, the State Treasurer, the State Auditor, and the Secretary of Agriculture, possesses the power to assign office space in the State Capitol to the various departments. Furthermore, the Department of Agriculture is required by law to submit a biennial report to the Executive Council of any special work for which a specific appropriation has been granted by the General Assembly. Whenever the Executive Council is satisfied that such work is completed or has been abandoned, it notifies the Comptroller to transfer the unexpended balance of the special appropriation to the general revenue fund of the State. All supplies and equipment needed by the Department of Agriculture must be requisitioned through the Executive Council which exercises complete authority over the purchase of supplies and equipment for all departments of State government located in Des Moines.⁴ The Executive Council does not, however, act as a real check upon the Department of Agriculture.

An annual audit (a more frequent audit may be made if necessary) of the books of the Department of Agriculture by the State Auditor throws the spotlight of attention on its financial transactions. No Secretary of Agriculture, dependent for office upon popular election, can risk financial malpractice.

The relationship of the Department of Agriculture to the Treasurer of Iowa is relatively simple. The Department is required by law to deposit regularly with the State Treas-

⁴ *Code of 1939*, Secs. 290-296, 302, 304, 305.

urer all fees, commissions, and other money collected in the course of its activities.⁵

In the enforcement of the laws delegated to the Department of Agriculture it is the duty of the Attorney General to prosecute and defend all actions and proceedings brought by or against the Secretary of Agriculture or any officer acting in official capacity. Advisory opinions may be secured by the Secretary of Agriculture on any question of public nature which arises in the course of the functioning of the Department.⁶ County attorneys perform similar functions in their fields. It is their responsibility to conduct prosecutions for violations of many of the laws administered by the Department.⁷

The courts of Iowa are essential to the Department whenever obedience to the law must rely on judicial process. The district courts are empowered to punish violations of the laws administered by the Department and they also hear cases initiated by individuals against some action of the Department. The Supreme Court of Iowa is the ultimate appeal agency. There the constitutionality of the law in question or the legality of the authority exercised by the Department may be reviewed. Generally, the courts strictly construe all delegations of power to administrative agencies.

A final relationship should be indicated briefly. Close and important controls exist between the Iowa Department of Agriculture and various bureaus of the United States Department of Agriculture. These relationships are largely coöperative in nature and arise out of personal contacts, formal and informal agreements, the coöperative use of personnel, and Federal grants-in-aid to the State.

⁵ *Code of 1939*, Sec. 143.

⁶ *Code of 1939*, Sec. 149.

⁷ *Code of 1939*, Secs. 2806, 2807, 2856.

ORGANIZATION WITHIN THE DEPARTMENT

Though the office is largely administrative and there is a widely accepted principle that administrative offices should be filled by appointment, the Secretary of Agriculture is elective. There are understandable reasons for this practice. The historical example of popularly elected officials of State government undoubtedly was strong in the minds of the Iowa legislators at the time this Department was organized. In addition there was strong support for making the Secretary of Agriculture a member of the Executive Council and the other members of the Executive Council were all popularly elected.

The significance of this plan becomes more evident when it is recalled that the Executive Council at that time constituted the State board of tax equalization and the farmers of Iowa felt that they needed a representative of their property interests in the equalization of assessments.⁸ Undoubtedly, too, farm interests felt that popular election of the Secretary would give them some direct measure of control over the manner in which the Department of Agriculture was to be operated.

As long as the Executive Council acted as a board of tax equalization, this representation of farmers was undoubtedly of great importance, but in 1929 the tax equalization function of the Executive Council was transferred to the State Board of Assessment and Review which ten years later became the State Tax Commission,⁹ thus eliminating one reason for popular election of the Secretary of Agri-

⁸ All amendments to have the Secretary of Agriculture appointed by the Governor were voted down. In the debate Senator J. D. Buser explained his vote against an amendment to have the Governor make the appointment subject to approval by the Senate by saying: "If it be the intention of the Fortieth General Assembly that the head of the new department of agriculture should be made a member of the executive council I think he should be elected by the people."—*Journal of the Senate*, 1923, pp. 1003, 1004.

⁹ *Laws of Iowa*, 1929, Ch. 205, 1939, Ch. 114.

culture. Furthermore, in choosing the Secretary by popular election farm interests do not control the policies of the Department to any appreciable extent since the major portion of its policies are determined by law. The reorganization act of 1923 authorized the Secretary to determine the internal organization of the Department and to establish such divisions as may be necessary to enforce the laws administered by it. He is also granted the power to establish and enforce rules not inconsistent with the statutes to implement these laws.¹⁰

As State Weed Commissioner the Secretary of Agriculture assists in the enforcement of the law concerning noxious weeds by coöperating with county boards of supervisors and weed commissioners, furnishing report blanks, aiding in the interpretation of the law, and making suggestions for eliminating noxious weeds. The Secretary is required to appoint the head of the Botany and Plant Pathology Section of the Iowa Agricultural Experiment Station as State Botanist. This official is responsible for developing a constructive program for weed eradication. Upon the latter's recommendation the Secretary may temporarily declare noxious any new weed which becomes a serious pest, thus bringing it within the scope of action of the weed commissioners.¹¹

Some measure of supervisory control and advisory power over the several affiliated agricultural organizations has been given the Secretary of Agriculture. In 1939 a law provided that he or someone named by him was to be a member of the State Soil Conservation Committee, giving a measure of coöperation and coördination between the two agencies.¹²

¹⁰ *Code of 1939*, Sec. 2590.

¹¹ *Code of 1939*, Secs. 4829.02, 4829.08.

¹² *Laws of Iowa*, 1939, Ch. 92, Sec. 4.

The Secretary of Agriculture is required to submit a comprehensive biennial report to the Governor containing information concerning the enforcement of the laws administered by the Department as well as recommendations for additional legislation.¹³

The Assistant Secretary of Agriculture is appointed by and is responsible to the Secretary of Agriculture. In the absence of the latter the Assistant Secretary acts as Secretary. In addition, the Assistant Secretary is responsible for the administration of State aid to farmers' institutes, short courses, poultry shows, and the enforcement of the unbonded warehouse law. All publicity of the Department is handled by the Assistant Secretary who also edits the *Iowa Year Book of Agriculture* containing the annual published report of the Department of Agriculture and all related agencies. The Assistant Secretary is largely an administrative officer supervising many of the routine details of administration, and assisting the Secretary in the performance of the duties delegated to him by the General Assembly.

The Division of Dairy and Food is concerned largely with the establishment and enforcement of certain minimum standards as defined in the statutes. Much of the work of this division is closely related to problems of public health. A chief, appointed by, and responsible to, the Secretary of Agriculture, supervises the work of the Division of Dairy and Food. Responsible directly to the chief of the division is the chief inspector who supervises the division's field inspectors. A chief clerk carries on the routine administration, and a license clerk supervises the issuance of all licenses.

The Dairy and Food Division is largely a bureau of inspection. It is responsible for the enforcement of thirty-

¹³ *Code of 1939*, Sec. 2600.

two laws covering a wide range of subjects. Practically all food products manufactured and dispensed in Iowa must be inspected and about seventy-five per cent of the commercial interests of Iowa are subject to inspection by its agents.¹⁴ This division also performs the work of a bureau of standards.

Although it is considered by the Department as a separate division the Chemistry Laboratory is quite closely associated with the Division of Dairy and Food. The chief of this division, the State Chemist, is appointed by the Secretary of Agriculture. Assisting the State Chemist are one motor fuel chemist, a foods chemist, a feeds chemist, and one seed analyst. These experts are engaged in testing samples collected by the dairy and food inspectors. Thus the chemistry laboratory largely performs specialized, technical work to assist the Dairy and Food Division.

The Division of Animal Industry¹⁵ is administered by a chief appointed by and responsible to the Secretary of Agriculture. Within the division is a chief clerk and secretary, a license clerk, a virus permit clerk, a stallion registration clerk, one poultry inspector, and nine district veterinarian tuberculosis inspectors each in charge of one inspection district established by the Department. Assisting the district inspectors when needed is a corps of several hundred part-time veterinarians appointed by the Secretary of Agriculture. Several Federal veterinarian tuberculosis inspectors (six in 1940), two Federal hog cholera control inspectors, and one Federal scab eradication inspector assist the State inspectors.¹⁶

In coöperation with the Federal agents this division is responsible for the protection and promotion of one of

¹⁴ *Iowa Year Book of Agriculture*, 1940, pp. 23, 24.

¹⁵ *Iowa Official Register*, 1941-1942, pp. 89, 90.

¹⁶ *Iowa Year Book of Agriculture*, 1940, p. 81.

Iowa's great industries. Together they perform tuberculin tests of cattle under the accredited area plan, test for Bang's disease, attempt to eradicate sheep and cattle scale, supervise pullorum testing of poultry, and control avian tuberculosis. All outbreaks of contagious diseases such as rabies, anthrax, and cholera are investigated. The division supervises and inspects livestock sale barns; establishes sanitary standards governing the importation and exportation of livestock; and establishes and enforces quarantine regulations to control contagious diseases of animals. Licenses are issued for the manufacture, sale, and distribution of hog cholera serum and virus. All veterinarians certified to the division by the State Board of Veterinary Medical Examiners must be issued licenses. This division must also enforce the veterinarian practice act and the stallion registration law.

The Division of Entomology, the third main bureau, was incorporated into the Department in 1927 with the passage of the Iowa crop pest act. By the provisions of this statute the office of State Entomologist was created within the Department of Agriculture, but the entomologist of the Iowa Agricultural Experiment Station was constituted the State Entomologist responsible to, and under the authority of, the Secretary of Agriculture in the issuance of all rules, regulations, and establishment of quarantines, and all other acts of an official nature. His salary is paid by Iowa State College and the office is located there. The act empowers the State Entomologist, with the approval of the Secretary of Agriculture, to employ, prescribe the duties, and fix the compensation of such inspectors and other employees as are necessary. The State Entomologist is instructed by the General Assembly to cooperate with other departments of the State and Federal government.¹⁷

¹⁷ *Laws of Iowa*, 1927, Ch. 68.

The personnel of the division is composed of the State Entomologist, an assistant entomologist who acts as chief inspector, such additional inspectors as are needed, and a secretary.¹⁸ The division is largely concerned with the control of crop pests; the inspection of nursery stock and its interstate shipment; the establishment and enforcement of plant quarantines; barberry eradication; insect identification; and the control of stored-grain pests.¹⁹

Three other divisions of minor importance form a part of the administration structure of the Department of Agriculture. The Warehouse Division, although technically a separate division within the Department, is under the direct control of the Assistant Secretary of Agriculture. It administers and enforces the unbonded warehouse law. The Division of Hatchery Inspection enforces the baby chick law, enacted by the Forty-ninth General Assembly, which regulates the licensing and inspection of hatcheries and the sale of baby chicks within the State.²⁰

In 1941 the General Assembly amended the existing law and established the apiarist of the Iowa Agricultural Extension Service as State Apiarist responsible to and under the authority of the Secretary of Agriculture in the issuance of rules, regulations, establishment of quarantines, and all other official acts. The office is located in Ames where all records are kept. The State Apiarist is appointed by the Iowa Board of Education, and his salary is paid by the Iowa State College of Agriculture and Mechanic Arts.²¹

Two other divisions function in close coöperation with the United States Department of Agriculture. The Iowa Weather and Crop Service Bureau became a part of the

¹⁸ *Iowa Year Book of Agriculture*, 1940, p. 97.

¹⁹ *Iowa Official Register*, 1941-1942, p. 90.

²⁰ *Laws of Iowa*, 1941, Ch. 122.

²¹ *Laws of Iowa*, 1941, Ch. 154.

Iowa Department of Agriculture as a result of the reorganization in 1923. This bureau was reorganized in 1937 and henceforth known as the Weather Division. The director, appointed by the Secretary of Agriculture, must be an officer of the United States Weather Bureau if one is made available for the position. The personnel of the division consists of the director and such office personnel as appropriations permit. The division is assisted by volunteer observers located in every county. The Weather Division is required, in close coöperation with the Federal Weather Bureau, to collect and disseminate weather and phenological statistics and meteorological data and to promote the knowledge of such matters throughout the State.²²

Previous to the reorganization in 1937 the Division of Agricultural Statistics was a part of the Iowa Weather and Crop Service Bureau. Under the new organization a separate Division of Agricultural Statistics was established within the Iowa Department of Agriculture. It too is required to coöperate closely with the Federal Department of Agriculture. The director, nominally appointed by the Secretary of Agriculture, must be an officer of the United States Bureau of Agricultural Economics, if one is detailed for that purpose by the Federal Department. The division gathers, compiles, and publishes agricultural statistics of value and interest to Iowa farmers; it publishes monthly crop and livestock estimates, and tabulates the farm statistics gathered by the township assessors and publishes them in the *Iowa Year Book of Agriculture*.²³

The Board of Veterinary Medical Examiners is a board of three licensed veterinarians appointed by the Secretary of Agriculture for a term of three years, one retiring each year. Vacancies are filled in the same manner. The board

²² *Laws of Iowa*, 1937, Ch. 108.

²³ *Laws of Iowa*, 1937, Ch. 108.

is required to meet at least once a year to give examinations for licenses to practice veterinary medicine as provided under the laws of Iowa.²⁴ By administrative practice the Chief of the Division of Animal Industry is appointed as a member, serving also as the executive officer and secretary to the board, without additional compensation.

The divisions discussed above are the integral bureaus of the Department. Several other agencies and organizations are loosely connected with the Department of Agriculture and must be considered in connection with the structure and functions of the Department. The State Soil Conservation Committee which administers the law on soil conservation districts is one of these. By statute the Secretary of Agriculture, or a person designated by him, is a member of this committee.²⁵

The farmers' institutes, the county short courses, and the farmers' poultry shows are concerned largely with educational and promotional work. The relationship of the Department of Agriculture to these organizations is of a general supervisory nature.

Several organizations and societies such as the State Dairy Association and the Iowa State Horticultural Society are affiliated with the Department of Agriculture. The Secretary of Agriculture is, by law, a member of the executive body of these several organizations. All grants to them of State funds are supervised by the Department. The Secretary of Agriculture is also a member of the Iowa State Fair Board, a semi-public agency, in charge of the annual State Fair. This board is the old State Board of Agriculture with much the same organization, but with limited functions.²⁶

²⁴ *Code of 1939*, Secs. 2777-2785.

²⁵ *Code of 1939*, Sec. 2603.05.

²⁶ *Laws of Iowa*, 1923, Ch. 46, Sec. 15; *Code of 1939*, Ch. 135.

THE LICENSING FUNCTIONS OF THE DEPARTMENT
OF AGRICULTURE

Licensing may be defined as "the administrative lifting of a legislative prohibition",²⁷ or as "an official permit to carry on a particular business or profession, or to do a particular thing otherwise forbidden."²⁸ A license issued by the Department of Agriculture grants a right to some individual or organization to engage in some business or activity which, without the license, would be a violation of existing laws of Iowa. Certifications, registrations, and permits, as required in some laws enforced by the Department, do not differ in any significant manner from ordinary licenses. Licensing is closely related to inspection and both inspection and licensing form the basis for much of the promotional work of the Department.

The power to license is based on the police power of the State and may be exercised for the purpose of revenue raising or for regulatory purposes or for a combination of the two. The primary purpose of licensing, however, is neither revenue nor prohibition but regulation. It is made effective by the formal general denial of a right which is then made individually available by an administrative act of approval, certification, consent, or permit. In 1931, Secretary of Agriculture Mark G. Thornburg stated that the goal of the Department was to be self-supporting²⁹ and a comparison of the total license fees, inspection fees, and oleomargarine "inspection fee and excise tax" collected by the Department with the appropriations made in corresponding years by the General Assembly proves that during the past few years the Department has been collecting

²⁷ *Encyclopedia of the Social Sciences*, Vol. IX, p. 447.

²⁸ Leonard D. White's *Introduction to the Study of Public Administration*, p. 500.

²⁹ *Iowa Year Book of Agriculture*, 1931, p. 5.

funds in excess of the amounts appropriated.³⁰ With but few exceptions funds collected by the Department revert to the general fund of the State and the expenses of the Department are then paid out by authority of the appropriation acts.

The Dairy and Food Division handles the greater bulk of licenses issued by the Department of Agriculture. A tabulation of important licenses issued by the division in 1940 conveys some idea of the scope and relative importance of its licensing function:³¹

<i>Type of license</i>	<i>Number of licenses issued in 1940</i>
Egg Dealers	7,322
Poultry Buyers	2,797
Scale Tag	2,526
Milk Dealers	8,776
Gasoline Pumps	20,476
Cream Graders	3,129
Cream Stations	1,340
Cream Trucks	1,694
Creameries	482

³⁰ The following table indicates the amount of collections and appropriations.

<i>Collections from license and inspection fees and from the oleomargarine tax for years ending December 31</i>		<i>Appropriation for the fiscal year ending June 30</i>
1926	\$205,003.44	\$466,020.00
1928	218,509.84	470,350.00
1930	225,799.90	472,350.00
1932	290,701.44	477,900.00
1934	321,340.99	315,051.00
1936	554,316.21	314,149.00
1938	439,849.89	321,815.00
1940	399,123.20	295,210.00

The data were taken from the *Iowa Year Book of Agriculture*, 1926, p. 87, 1928, p. 120, 1930, p. 103, 1932, p. 38, 1934, p. 37, 1936, p. 50, 1938, p. 19, 1940, p. 26; *Laws of Iowa*, 1925, pp. 198-200, 1927, pp. 237-239, 1929, pp. 331-333, 1931, pp. 189-191, 1933, p. 217, 1935, pp. 181, 182, 1937, pp. 1-3, 1939, pp. 1-3.

³¹ *Iowa Year Book of Agriculture*, 1940, p. 26.

Hotels	1,658
Restaurants	6,210
Commercial Fertilizers	720

Several general provisions governing the issuance of licenses under laws providing for the regulation and inspection of foods, drugs, and other articles have been established by the General Assembly. Among these are the following: "(1) Applications for licenses shall be made upon blanks furnished by the department and shall conform to the prescribed rules of the department. (2) For good and sufficient grounds the department may refuse to grant a license to any applicant; and it may revoke a license for violation of any provision of this title, or for refusal or failure of any licensee to obey the lawful directions of the department. (3) Unless otherwise provided all licenses shall expire one year from the date of issue."³²

One category of licenses issued by the Dairy and Food Division — those issued to individuals engaged in professions or skills affecting the public health — include licenses issued to persons testing milk or cream³³ (to determine the per cent of fat — the Babcock test — as a basis for determining price) and all cream graders.³⁴ No license is issued

³² *Code of 1939*, Sec. 3045.

³³ The Iowa dairy law requires the licensing of all milk testers. The applicant submits to the division an application along with a fee of two and one-half dollars. Information relating to the requirements for license and the Babcock test is sent to the applicant. The inspector of the particular inspection district is notified of the applicant's name and address and, in turn, notifies the applicant of the time and place tests are to be given. The test usually includes a practical demonstration in milk testing. This is required by law. If the applicant passes the examination the inspector notifies the licensing clerk of the Dairy and Food Division and the license is issued to the applicant. However, if the licensee ceases for any reason to exercise his license for a period of five years or more the license is considered void and the individual is required to take the examination again.— *Code of 1939*, Secs. 3079-3084.

³⁴ The cream grading law requires every creamery and cream station to employ a licensed cream grader to grade cream used in butter manufacture.

unless the applicant successfully passes practical tests administered by the Department. Licenses are valid for one year and are renewable upon payment of a nominal renewal fee. However, licenses allowed to lapse for five or more years may be renewed only after reëxamination. They are not transferable, although milk testers may appoint, with the approval of the Department, a substitute for a period not exceeding two weeks. Licenses may be revoked for violation of any laws or regulations applying to milk testers or cream graders. Failure to pass one examination does not disqualify the applicant from further attempts.

A second category of licenses issued by the division — those issued as a condition precedent to engaging in some business — includes licenses issued to hotels, restaurants, bakeries, canning factories, slaughterhouses, meat markets, and other food establishments;³⁵ cold storage and locker plants;³⁶ retail dealers of milk and cream;³⁷ creameries,

Licenses are not transferable. A fee of one dollar is charged for the license.— *Code of 1939*, Secs. 3100.26–3100.28. The State is divided into four testing districts for the purpose of giving examinations to applicants for the milk tester and cream grader licenses.— *Cream Grading Law Together with Rules, Regulations, and Suggestions Regarding its Enforcement*, 1939, Iowa Department of Agriculture Bulletin No. 64, p. 8; *Iowa Year Book of Agriculture*, 1935, pp. 64–67.

³⁵ *Code of 1939*, Secs. 2809–2812.

³⁶ *Laws of Iowa*, 1913, Ch. 199, 1939, Ch. 89. The license fee is twenty-five dollars a year and all licenses expire on December 31st following the date of issue. Similar provisions pertain to the licensing of cold storage locker plants, except that the annual license fee is ten dollars for a plant of two hundred or less individual cold storage lockers, with an added fee of two dollars for each additional one hundred storage lockers. A plant licensed under the cold storage law, but renting locker space to the public, is not required to secure a license as a cold storage locker plant. The statutes require that all such plants must be thoroughly inspected before a license is granted to determine if “sanitary conditions and equipment which, in the judgment of the department, are necessary for the proper operation of such refrigerator plant, have been provided.” — *Code of 1939*, Secs. 2858, 2860, 2872.02, 2872.05.

³⁷ The State dairy law enacted by the Twenty-fourth General Assembly and since amended several times, provides that all persons engaging in the retail

cream stations, and cream trucks;³⁸ egg dealers;³⁹ poultry dealers;⁴⁰ and public scales and gasoline pumps.⁴¹ A nominal fee, usually three dollars or less, is charged for each license with the exception of cold storage plants and cold storage locker plants in which cases higher license fees prevail. Hotel licenses are transferable upon change of ownership of the hotel. No limit is placed by statute or departmental action upon the number of licenses which may be issued. Most licenses for food establishments are

sale of milk or cream in any city or town must obtain a milk dealer's license from the Department of Agriculture. These provisions are not applicable to persons who supply milk or cream to establishments engaged in manufacturing dairy products nor to those who do not sell milk from a store or vehicle. Licenses are issued only to the person owning or leasing the vehicle or place from which sales are made and must contain on the face of the license the individual's name, residence, and place of business. A license fee of one dollar is levied for each vehicle and business site. The license is valid for one year only.—*Code of 1939*, Secs. 3071-3074.

³⁸ The cream grading law enacted in 1935 by the Forty-fifth General Assembly provides for licensing creameries, cream stations, and vehicles used for the collection of cream.—*Laws of Iowa*, 1935, Ch. 29. All applications are made to the license clerk of the Division of Dairy and Food. Each license specifies the particular creamery or cream station which is authorized to operate, or the general route traveled by the vehicle engaged in picking up cream. Licenses are valid for one year from date of issuance unless revoked for violation of the statute and rules of the Department, and must be posted in a conspicuous manner at the creamery, cream station, or in the driver's compartment of the cream truck. A fee of three dollars is assessed each creamery, one dollar for each cream station, and one dollar for each truck operating on a designated cream route.—*Code of 1939*, Secs. 3100.34-3100.37.

³⁹ Regulation of the production and sale of eggs (to promote fair dealing and to increase the market value of Iowa's egg crop) was begun in 1919 and later amended.—*Laws of Iowa*, 1919, Ch. 274, 1927, Ch. 64. Retailers who buy direct from licensed dealers and those who do not sell in lots of more than one case are exempt from the licensing requirement. The license is valid for one year and expires on March 1st after date of issue. The fee for each license is one dollar.—*Code of 1939*, Secs. 3101-3103.

⁴⁰ The poultry marketing law was enacted to prevent the sale of diseased poultry and to help stop petty thievery of poultry.—*Laws of Iowa*, 1927, Ch. 67.

⁴¹ *Laws of Iowa*, 1864, Ch. 56, 1913, Ch. 266, 1921, Ch. 187; *Code of 1939*, Secs. 3259-3262.

issued routinely upon receipt of the application and the correct fee, but the Department requires that all new restaurants, cream stations, cold storage plants, and cold storage locker plants must be inspected by a dairy and food inspector who is required to forward a copy of his report to the division. Licenses may be revoked for violation of provisions of the statutes or the rules of the Department.

The Division of Dairy and Food is responsible for issuing certain certificates of registration, or permits (which differ but little from ordinary licenses) as a means of regulating certain businesses in the interest of the public welfare. The Iowa law provides for the registration of distinctive marks or brands used on containers by persons engaged in the dairy business. The Department must approve all brands which are thus registered. Permits to import petroleum for industrial uses are required of all wholesale dealers and the grant of the permit exempts the holder from the other provisions of the motor vehicle fuel law.⁴²

The commercial feed law, first enacted in 1907, requires the seller of commercial feeds to register each such feed with the Department of Agriculture before placing it on sale. Each separate registration costs fifty cents and must be accompanied by an affidavit containing the necessary information about the feed, and this must be printed on the label. Applications for certificates of registration must include a permit granting the Department access to the applicant's records to determine the tonnage tax levied as an inspection fee. Upon request by the Department a sample of the feed must accompany the registration fee and affidavit.⁴³

⁴² *Code of 1939*, Secs. 3095-3100, 5095.12. See also Bulletin No. 60 issued by the Iowa Department of Agriculture under the title, *Law Relative to Containers of Dairy Products and Tentative Regulations*, 1940.

⁴³ *Code of 1939*, Ch. 152.

The commercial fertilizer law as amended in 1941⁴⁴ provides for the registration of each brand of fertilizer offered for sale in Iowa by any company. However, if the brand has been registered by the manufacturer or distributor other persons selling the brand are not required to register it again. A fee of twenty-five dollars is collected for each brand of commercial fertilizer registered. Registrations are renewable each year upon payment of a renewal fee of one dollar. In addition, a license fee, or tonnage tax, of ten cents per ton is levied upon all commercial fertilizer distributed in Iowa by the manufacturer or jobber. All others are exempt from the tax which has revenue producing potentialities. The law has not been in operation for a period long enough to reveal significant facts.

The mattress and comfort law, as amended in 1923, requires every manufacturer of mattresses and comforts to register with the Department of Agriculture. The Department issues factory registration numbers which must appear on the label attached to each mattress or comfort manufactured for sale in Iowa. No fee is charged for the registration.⁴⁵

The Department may exercise wide discretionary power in refusing to issue a license to an applicant or in revoking a license for violation of any statutory provisions or departmental rules and regulations. The power to refuse or to revoke licenses is limited only by such a broad phrase as "for good and sufficient grounds." Moreover, none of the statutes places a time limit in which the Department must grant or refuse the license. Theoretically, at least, pressure could be brought to bear on an applicant to meet the required standards by continuous delay in granting the license. All applications for licenses are, however, usually

⁴⁴ *Laws of Iowa*, 1941, Ch. 131, Secs. 4, 6.

⁴⁵ *Laws of Iowa*, 1923, Ch. 36; *Code of 1939*, Sec. 3223.

cleared through the Department within fourteen days. Should delay of this type be practiced the applicant's only recourse would be to bring action in a district court of the State for a writ of mandamus compelling the Secretary of Agriculture to act upon the application. In practice, the Department seldom refuses to grant licenses in those cases where inspection before licensing is not required by law or by the Department.

Whenever the statute requires that inspections be made to determine the existence of certain standards before a license is issued the Department does exercise its right to refuse a license "for good and sufficient reasons". Its power to refuse a license to milk testers and to cream graders is clearly implied in the law because applicants for these licenses must first pass an examination given by the Department. If the examinee fails, the license must be refused. Authority to refuse to license cold storage plants and cold storage locker plants is clearly implied in the law which requires the Department to inspect all such establishments before issuing the license. Such explicit provision for inspection before a license can be issued are not contained in any other licensing laws.

The power of an administrative agency to revoke licenses issued to persons or concerns engaged in business or various professions means more to the licensee than the power to refuse to grant a license. Once a license is granted vested interests come into existence which ordinarily can be reduced only upon factual evidence of violation of some of the conditions of the license. The power of the Department of Agriculture to revoke licenses rests upon broad statutory grants.

The laws governing the licensing and inspection of hotels, restaurants, and food establishments provide that any license issued under these laws "may be revoked by

the department for violation by the licensee of any provisions of this chapter".⁴⁶

Licenses issued to milk dealers, milk testers, cream graders, creameries, egg dealers, gasoline pumps, and public scales may be revoked for violation of any provisions of the laws regulating these businesses and "for the refusal or failure of any licensee to obey the lawful directions of the department." If any licensee fails to conform to the provisions of the laws regulating cold storage plants and cold storage locker plants his license is to be revoked by the Department.⁴⁷

Creamery and cream graders' licenses may be revoked by the Secretary of Agriculture for any violation of the statute, or for "violation of any standard of sanitation prescribed by any other statute applicable to the holder of such license, but only after the holder of the license has been given reasonable notice of the intention to revoke the license and reasonable opportunity to be heard, provided that when a licensee is convicted of a wilful violation of any requirement of this chapter [of the Code], the secretary shall summarily suspend such license for a period of thirty days and provided that upon a second such conviction the secretary shall summarily and permanently revoke said license."⁴⁸

Before actual revocation proceedings are initiated every informal technique at the Department's command is exhausted in an effort to secure willing conformance to the required standards. Several inspections may be made to assist the licensee to meet the minimum standards. The inspector not only informs the licensee of the standards but makes suggestions as to how difficulties can be eliminated.

⁴⁶ *Code of 1939*, Sec. 2813.

⁴⁷ *Code of 1939*, Secs. 2864, 2872.07, 3045.

⁴⁸ *Code of 1939*, Sec. 3100.38.

Correspondence is carried on with the licensee urging compliance and suggesting solutions. More drastic action is delayed until all such informal efforts have ended in failure.⁴⁹

The Department initiates revocation proceedings by giving the alleged violator a five-day written notice to appear before the Secretary of Agriculture at a designated time to show cause why the license should not be revoked. The hearing, which follows the notice, is informal in nature and is conducted by the Secretary of Agriculture. Both the defendant and the inspector who brought the charge must be present at the hearing. If evidence is presented to show that the defendant is attempting to comply with the statutes and rules, the Secretary, at his discretion, may allow the defendant additional time to make necessary adjustments before ordering an inspection of the premises by a dairy and food inspector. If the inspector finds that all matters in question have been corrected, the revocation proceedings are dropped. If not, the defendant's license is revoked. The only recourse of the licensee would be to bring action in a district court to have the entire case reviewed by the judicial branch of the State. Very few revocation proceedings have occurred in the history of the Department.

Once a license has been revoked and the reasons for revocation are eliminated, the individual may apply for a new license. An application for license from a party whose previous license was revoked is followed by an inspection before the new license will be issued. The Department maintains a file of all licenses issued in the past years and all applications for licenses are first checked against the file

⁴⁹ All material on revocation of licenses is based on personal conferences with Mark G. Thornburg, Secretary of Agriculture, and B. O. Brownlee, Chief Inspector, Dairy and Food Division, June 12, 1942.

to determine whether or not the applicant ever possessed a previous license which was revoked or not renewed for cause. The law is silent as to the power of the Department to suspend licenses for temporary periods excepting for violations by licensed creameries and licensed cream graders.⁵⁰

The important point involved here is that suspension of these licenses occurs only after conviction by the courts, whereas licenses may be revoked by the Department upon an administrative finding that a violation of the terms of the license has occurred. Except in cases of judicial convictions, the Department seldom suspends licenses, preferring to rely upon refusal to renew licenses or upon its power to revoke licenses to secure conformance with the law.

The Division of Animal Industry performs various licensing functions of considerable importance to farm interests. Persons engaged in the business of operating rendering plants for the disposal of dead animals are required by law to be licensed by the Department of Agriculture.⁵¹ Applications for such licenses are made upon forms furnished by the Department and include the name and residence of the applicant, the particular methods to be used in disposing of dead animals, and any other information required. A fee of one hundred dollars must accompany each application. This fee is not refundable if the license is not granted.

Upon receipt of the application the Department is required by law to make a thorough investigation of the building in which the applicant proposes to conduct the disposal business to determine whether it complies with

⁵⁰ *Code of 1939*, Sec. 3100.38.

⁵¹ The purpose of this requirement as stated in the preamble was the prevention of hog cholera and other diseases.—*Laws of Iowa*, 1919, Ch. 248.

the requirements of the statute and the rules of the Department. The inspector must also determine whether the applicant is a "responsible and suitable" person to conduct such a business. The report of the inspection is certified in writing to the Secretary of Agriculture. If the report is favorable the Department issues a license upon the receipt of another hundred dollars. If the building does not comply with statutory requirements and rules of the Department the applicant must be notified wherein it fails to meet the required standards. If the defects are remedied within a reasonable time, a second inspection is made, and the license is issued upon payment of the prescribed additional fee. The Department is not required to make more than two inspections under one application. The original license may be renewed each year upon the payment of a renewal fee of one hundred dollars, providing the licensee continues to be a "responsible person" and to comply with the provisions of the law and the rules of the Department.⁵²

Although no provision is made for revocation of the license, none would appear to be necessary. The short life of the license (one year), the power to refuse a license for cause, and to refuse to renew the license if the business fails to continue to abide by the proper standards would seem to suffice as adequate licensing power for effective regulation of the business.

Manufacturers of and dealers in biological products and persons who administer hog-cholera virus are required by law to secure permits from the Department of Agriculture. All manufacturers of and dealers in biological products are required to make applications for permits on application forms furnished by the Department. An application for a manufacturer's permit must be accompanied by satisfactory evidence that the manufacturer possesses a valid, un-

⁵² Code of 1939, Secs. 2747-2753.

revoked license issued by the United States Department of Agriculture to manufacture and sell biological products. An application for a dealer's permit must be accompanied by a bond of five thousand dollars with sureties approved by the Iowa Department of Agriculture.

Upon receipt of the application the Department may inspect the premises upon which the business will be conducted and make any requirements regarding the physical conditions and sanitation of the premises which it deems necessary to secure and protect the potency and purity of the biological products. If the requirements imposed by the Department are ignored the permit is refused. A permit fee of twenty-five dollars is charged for each manufacturing plant and fifteen dollars for each warehouse or distributing agency of the dealer. A permit is valid for only one year. Renewal is subject to the same conditions and fees as required for original permits.

Permits may be revoked by the Department for several reasons. Automatic revocation occurs when manufacturers of biological products cease to possess a valid Federal license; when dealers fail to execute and file with the Department a new and approved bond to the amount determined by the Department; and for price discrimination. Permits revoked for the latter reason cannot be renewed for one year. The Department may revoke permits after reasonable notice and hearing for violation by the holder of the terms, conditions, and requirements attached to the permit; for violation of any law or rule established by the Department relating to such business; and in case the dealer's bond has been impaired in any way and no new bond is provided.⁵³ The Department's usual revocation procedure allowing notice of five days and an informal hearing before the Secretary of Agriculture is followed.

⁵³ *Code of 1939*, Secs. 2707-2710, 2714-2718.

All persons administering hog-cholera virus, excepting licensed veterinarians, must possess a permit issued by the Department of Agriculture. Upon application by at least ten applicants from any county the Extension Division of the Iowa State College of Agriculture and Mechanic Arts is required by law to conduct in that county a one-day school of instruction in the administration of hog-cholera virus. A fee of thirty dollars is fixed for such school to be prorated among the applicants. Students passing the examination at the end of the school are so certified to the Department. Within five days the Department must issue the permits which entitle the holders to administer hog-cholera virus to their own hogs. The fees are returned to unsuccessful applicants. The permit is valid until revoked by the Department on evidence that the holder has become incompetent to administer the virus. From time to time the permit holder may be required to submit reports upon blanks furnished by the Department covering such information as may be requested. These reports must be filled out and returned by registered mail within ten days from date of receipt. Permits may be suspended for failure to return reports.⁵⁴

The stallion registration service, a special licensing function conducted by the Division of Animal Industry, exists to protect the owners of stallions and mares from dishonest breeding practices.⁵⁵ This service enrolls all registered stallions offered for public service and issues certificates of soundness. All jacks offered for public service must have a certificate of soundness stating whether or not the animal is registered or unregistered. Applications for enrollment as registered animals are filed by the owner with the Division of Animal Industry and must include the

⁵⁴ *Code of 1939*, Secs. 2721-2735.

⁵⁵ *Code of 1939*, Ch. 127; *Iowa Year Book of Agriculture*, 1941, pp. 188, 189.

name, age, and color of the animal. The application must be accompanied by a certificate of pedigree and an affidavit signed by a licensed veterinarian of Iowa stating that the animal was examined by him and found to be free from any unsoundness or any hereditary, infectious, or contagious disease. Applications for certificates of soundness for unregistered jacks are made in a similar manner excepting that no certificate of pedigree is required.

Certificates of soundness may be revoked by the Department. Upon complaint made to the Department a special board is established by statute to determine whether or not a stallion or jack is diseased. If the Department determines that an examination is "reasonably necessary" it notifies the owner accordingly. The animal is examined by a board of three licensed veterinarians, one appointed by the Department, one by the owner, and a third member appointed by the other two. If the owner fails to appoint a veterinarian to act for him within ten days, the Department makes the appointment. Decisions of the examining board are made by a majority vote, are certified to the Department, and are final.

The only element of discretion exercised by the Department is in the determination of whether or not an examination is "reasonably necessary". If the Department rules that such an examination is not necessary the only recourse left open to the one making the complaint is to carry the decision to the district court. If the animal is found eligible to receive or retain a certificate of soundness the cost of the examination is paid by the State, otherwise it is to be charged to the owner.⁵⁶ This administrative machinery is seldom called into use as few complaints are received.⁵⁷

⁵⁶ *Code of 1939*, Secs. 2630-2634.

⁵⁷ Personal conference with Dr. C. C. Franks, Chief of the Division of Animal Industry, June 12, 1942.

The Department of Agriculture licenses veterinarians who are qualified to practice veterinary medicine, surgery, and dentistry in Iowa. Applicants must present satisfactory evidence of being at least twenty-one years of age and of good character; must give proof of graduation from a school of veterinary medicine recognized by the State Board of Veterinary Examiners; and must pass an examination in veterinary medicine, surgery, and dentistry given by the board.⁵⁸

The State Board of Veterinary Examiners is authorized by statute to give examinations at least once a year to applicants for licenses to practice veterinary medicine. Persons wishing to take the examination must make application with the Department of Agriculture on the form provided for the purpose at least fifteen days before examinations are scheduled. These must be signed and sworn to, and must be accompanied by the necessary documents and affidavits to support the candidate's eligibility. The Department then transmits to the Board of Veterinary Examiners the list of eligible candidates. All examinations must be in writing and the identity of the candidate's paper is concealed from the board until graded. Examinations must be graded in accordance with the rules of the board and approved by a majority of the board. The examining board then certifies the names of the successful candidates to the Department of Agriculture which issues the licenses.⁵⁹

The granting of a license to practice veterinary medicine is a simple, routine administrative process but revocation of such a license destroys a "property right". The administrative procedures utilized to revoke the license must therefore be clothed with robes of a judicial nature. Administrative due process moves closer to judicial due process.

⁵⁸ *Code of 1939*, Secs. 2764-2785.

⁵⁹ *Code of 1939*, Secs. 2786-2792.

Iowa law provides for revocation or suspensions of veterinary licenses for various reasons — fraud in procuring the license; incompetency in the practice of the profession; immoral, unprofessional, or dishonorable conduct; habitual intoxication or addiction to the use of drugs; conviction of any offense involving turpitude; fraud in statements as to skill and ability; use of “untruthful or improbable statements in advertisements, publicity material, or interviews”; and for distribution of alcohol or drugs for any other than legitimate purposes. Finally, a veterinary license may be revoked or suspended for wilful and continual violations of the laws of the State affecting veterinary practice and public health, and for violations of the rules of the Department of Agriculture.⁶⁰

Action to revoke the license of a veterinarian is initiated by the Attorney General of the State who, on his own motion or when directed by the Department of Agriculture, files in the office of the Department a petition against such licensed veterinarian. The State Board of Veterinary Examiners and the Secretary of Agriculture as chairman compose a hearing board before which the Attorney General must prosecute such petitions on behalf of the State.

Decisions are rendered by a majority vote of the hearing board. If the license is suspended or revoked the costs of the hearing must be paid by the defendant, otherwise by the State. If the hearing board revokes a veterinary's license the defendant may carry the case to the district court, thus transferring further adjudication from the administrative body to a duly constituted judicial body. In actual practice, veterinary licenses have rarely been revoked.⁶¹

Under the baby chick act, passed in 1941, the newly estab-

⁶⁰ *Code of 1939*, Sec. 2799.

⁶¹ *Code of 1939*, Secs. 2799.1-2799.6, 2806.

lished Hatchery Inspection Division of the Department of Agriculture is empowered to license all persons engaged in the business of custom hatching and the sale of baby chicks in Iowa. The law makes no provision for inspection previous to the issuance of the license. Licenses are valid for one year and expire on July first. The fee for a license is ten dollars and the same charge is made for a renewal. Chicks hatched in other States but sold in Iowa come within the scope of the law. The establishments licensed under the provisions of this law are subject to inspection by the Department. The law is silent upon the matter of suspending or revoking licenses, but violations of the act are punishable by a fine not exceeding one hundred dollars.⁶²

The Department has issued licenses to all hatcheries in operation in Iowa to blanket them in under the law. Just what particular technique of control will be utilized by the Department in enforcing the law remains for future determination. It is to be presumed that the general power of the Department to refuse licenses, to refuse to renew licenses, and to revoke licenses will apply to hatcheries.

One further licensing activity must be mentioned, and that is the licensing of the supervisory boards provided for in the agricultural warehouse act of 1923.⁶³ Local supervisory boards of not less than three nor more than seven members may be appointed by the Secretary of Agriculture for any county for the purpose of supervising grain storage and issuing certificates of storage against such grain. Initiation of action to appoint such boards rests with any individual who may make application to the Secretary of Agriculture to that effect, or with the Secretary himself. This initial step is followed "as soon as practicable" by an investigation conducted by the Secretary to determine the advisability of appointing such a board.

⁶² *Laws of Iowa*, 1941, Ch. 122.

⁶³ *Laws of Iowa*, 1923, Ch. 191.

Immediately upon the appointment and qualification of the members of a board the Department must issue a numbered license to the board along with information as to the prescribed duties of the board members and the territory over which the board is to have jurisdiction. A license fee of three dollars is charged. The Secretary may suspend the license of any board which fails to act according to the terms of the law. However, suspension of the license does not relieve the board of any liability previously incurred under this act.⁶⁴

Licensed local warehouse boards did not assume a prominent place in Iowa's farm picture until 1933. With this procedure for sealing grain Iowa was in a position to cooperate with the first Federal corn loan program administered by the Commodity Credit Corporation in 1933 and 1934. The local warehouse boards supervised the sealing of 130,000,000 bushels of corn under this program. These boards continued to perform this important function until 1938 when the Federal farm loan program was reorganized as part of the Agricultural Adjustment Administration which absorbed the responsibility of sealing the stored grain under the loan program. As a result the warehouse boards have ceased to be of any considerable importance. In 1940 thirty-four warehouse boards voluntarily disbanded upon suggestion by the Secretary of Agriculture because no longer needed and to save expense.⁶⁵

INSPECTIONAL FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE

The inspectional functions of the Iowa Department of Agriculture are carried on primarily to enforce standards

⁶⁴ *Code of 1939*, Secs. 9752.02-9752.06, 9752.44. See also the Iowa bonded agricultural warehouse law under the supervision of the Iowa Commerce Commission.—*Code of 1939*, Ch. 426.

⁶⁵ *Iowa Year Book of Agriculture*, 1934, pp. 101-115, 1938, pp. 98-101, 1940, pp. 126, 127.

imposed by law and to improve them. The inspectors of the Department endeavor to achieve these ends by publicity, by coöperation and consultation with those directly involved, by reporting violations of the laws to the Department, and by helping to bring the violators to justice.

The Dairy and Food Division engages in widespread inspection work over the entire State of Iowa to a greater extent than either of the other two major divisions of the Department of Agriculture. The inspection of hotels, restaurants, and food establishments to enforce the State sanitary laws is a comprehensive and ambitious program. The law relating to sanitary construction requires the Dairy and Food Division to inspect plumbing, type of floor, screens, finish of interior wall, and toilet rooms of all hotels, restaurants, and food establishments.

Standards to be adhered to in the operation of such food-producing and distributing establishments are created by law and deal with such matters as lighting, ventilation, cleanliness of buildings, proper handling of food, towels, drinking cups, expectorating, employment of diseased persons, and the street display of food. In addition to these general standards the statutes establish additional sanitary requirements for hotels relating to such matters as bedding, vermin infestation, towels, ventilation in bedrooms, as well as other matters.⁶⁶

The inspection force of the Dairy and Food Division consists of a chief inspector, twenty-one regular inspectors, six special hotel and restaurant inspectors, a motor fuel inspector, and four heavy scale inspectors. The law requires that every hotel, restaurant, and food establishment must be inspected at least once a year. Actually, the Department inspects hotels on an average of three times a year. The inspectors are empowered to make investigations at any

⁶⁶ *Code of 1939*, Secs. 2814-2840.

reasonable hour and the management of the business is required to allow the inspectors free access to every part of the establishment and to aid the inspector in every way possible.⁶⁷

All hotel inspections are conducted by a special hotel and restaurant staff of six inspectors. A hotel inspection report is filled out for each inspection. Seventeen specific items must be checked, ranging from the sanitary condition of the halls and rooms to the adequacy of the fire escapes. No scoring system has been devised for these reports, nor is any inspection fee charged.

The hotel and restaurant inspectors are responsible also for reports on violations of the fire protection law applying to hotels. This law regulates fire exits and requires fire escapes and fire escape signs, as well as other safety measures. All violations encountered by an inspector are immediately reported to the State Fire Marshal and the proper local authorities whose responsibility it is to enforce the fire protection laws.⁶⁸

All new restaurants opening for business and all restaurants changing ownership are required by law to pay an initial inspection fee of fifteen dollars in addition to the annual license fee of three dollars.⁶⁹ This inspection fee is collected by the Department of Agriculture and transferred to the State Treasurer. The law requires the Treasurer of Iowa to establish a special "restaurant fund" which can be drawn upon by the Secretary of Agriculture to pay the costs of administering and enforcing laws applying to restaurants. However, if in the opinion of the Secretary of

⁶⁷ *Code of 1939*, Sec. 2851. The statute also provides that hotel rates must be posted in each room and no charge greater than that posted can be made unless the Department of Agriculture is notified sixty days in advance of the proposed increase.—*Code of 1939*, Secs. 2841, 2842.

⁶⁸ *Code of 1939*, Secs. 2843–2856.

⁶⁹ *Code of 1939*, Sec. 2812.1. This does not apply to temporary restaurants.

Agriculture the balance remaining in the fund on July 1 of each year is greater than the amount needed, the Treasurer of Iowa is authorized, upon the recommendations of the Secretary of Agriculture, to transfer to the general fund of the State the amount recommended by the Secretary.⁷⁰

Provision is made by law for special inspections of hotels, restaurants, and food establishments upon receipt by the Department of a verified complaint signed by a patron which contains facts showing that the establishment is in an unsanitary condition, or that the provisions for fire protection are not being observed. If the investigation reveals the complaint to be correct, the expense of the inspection is charged to the establishment; otherwise, it is to be charged to the person who entered the complaint. Many such complaints are received and investigated. Most of these are found not to be valid, but the author of the complaint is not assessed the inspection cost as provided by law.⁷¹

Dairy and food inspectors are responsible for the inspection of all food establishments including "any building, room, basement, or other place, used as a bakery, confectionery, cannery, packing-house, slaughterhouse, dairy, creamery, cheese factory, restaurant or hotel kitchen, retail grocery, meat market, or other place in which food is kept, produced, prepared, or distributed for commercial purposes."⁷² Such establishments are inspected on an average of two to three times a year. No inspection fee is charged.

The authority of the Department of Agriculture to inspect food establishments includes dairies and creameries. As a result, dairy and food inspectors are to be found

⁷⁰ *Code of 1939*, Sec. 2812.2.

⁷¹ *Code of 1939*, Sec. 2852; conference with B. O. Brownlee, Chief Inspector, Dairy and Food Division, June 12, 1942.

⁷² *Code of 1939*, Sec. 2808.

investigating dairies throughout Iowa to check sanitary conditions against the sanitary standards provided by law and the regulations established by the Department. In 1940, over two thousand inspections of dairies were made.⁷³ A special farm dairy inspection report is filled out by the inspector at the time the inspection is made.

The Department makes every effort to coöperate with cities which have enacted milk ordinances to regulate the local milk supply and provide for inspections of dairies in an effort to eliminate duplication, but whenever city inspectors experience difficulty in enforcing some particular provision of the milk ordinance, they are free to call on the Dairy and Food Division for assistance. Some city milk ordinances require that all dairies which produce milk for the city must be inspected and scored. The Department has coöperated in this matter by establishing a scoring system which the Department's inspectors utilize wherever required by city ordinance. The scoring is done on the farm inspection report. In 1940, the Department of Agriculture drew up "A Suggested Milk Ordinance" which is recommended to all Iowa cities as a model. The standards established in city milk ordinances may not conflict with those established by State law.

From time to time the Department of Agriculture conducts milk surveys in various cities and towns in search of milk offered for sale that is contaminated and unfit for human consumption. The survey is initiated if the local health officer or an inspector believes that the milk in the area is being produced under unsanitary conditions. These surveys, conducted by the inspectors and chemists of the Dairy and Food Division, check bacteria count in the milk, presence of dirt, sediment and excess chlorides, and the pasteurizing process. After this report is received the in-

⁷³ *Iowa Year Book of Agriculture*, 1940, p. 27.

spector checks the premises in question as a follow-up to the tests.⁷⁴

Inspection of creameries, cream stations, and cream trucks is another important activity performed by the division.⁷⁵ A special creamery inspection report is filled out by the inspector at the time a creamery is inspected. In addition, all creameries are required by statute to furnish such reports and statistics as may be requested by the Department.⁷⁶ The Department requires an annual report to be made on forms prepared by it. These statistics are usually published in the *Iowa Year Book of Agriculture*.

In addition to enforcing provisions of the sanitary laws relating to creameries, the dairy and food inspectors are required to enforce standards pertaining to cream grading. They must also see that a price differential of not less than one cent a pound of butterfat between any two grades of cream is maintained in all creameries.⁷⁷ Creameries engaged in interstate commerce are subject to Federal standards as well as those established by the State of Iowa. All creameries are scored once a year on the creamery score card devised by the Department.

The Department is also responsible for the enforcement of the law relating to the maintenance of sanitary closets in railroad stations. Regular inspections are made in addi-

⁷⁴ *Iowa Year Book of Agriculture*, 1937, pp. 60-64. The Department of Agriculture has recently coöperated with the Federal officials in surveying milk sold to processing plants manufacturing cheese and powdered milk. There is room for improvement in this matter since in 1942 some cheese was not rated as of good enough quality to be purchased under the Lend-Lease Act.—Personal conference with B. O. Brownlee, Chief Inspector, Dairy and Food Division, June 12, 1942.

⁷⁵ In 1940, 482 creameries were licensed and 3369 inspections were made; 1340 cream stations were licensed and 5793 inspections were made.—*Iowa Year Book of Agriculture*, 1940, pp. 26, 27.

⁷⁶ *Code of 1939*, Sec. 3055.

⁷⁷ *Code of 1939*, Sec. 3100.24.

tion to those made upon receipt of a complaint by an employee or patron of the railroad. The Department is required to notify the station agent in writing of any failure to comply with the law and order the matter remedied within a reasonable time. The Department is authorized to collect a fee of five dollars from the railroad. If the complaint is not justified the individual making the complaint is liable for the amount. Usually no fee is charged for such inspections.⁷⁸

The Department of Agriculture must regularly inspect all cold storage plants and cold storage locker plants.⁷⁹ Cold storage plants are inspected at least once a year and locker plants an average of two to three times a year. All frozen food locker plants are scored by dairy and food inspectors on a score card devised especially for the purpose. One copy of the inspection report is left at the plant, one copy is forwarded to the Department, and the third is retained by the inspector.⁸⁰ Special sanitary standards are also provided by statute for slaughterhouses.

All mattress factories in Iowa are inspected by the Department to enforce the sanitary laws of the State with particular emphasis upon the sanitary condition of the material going into the mattresses. The Department is authorized to collect a ten-dollar inspection fee for each inspection up to a maximum of two a year. Additional inspections are made at the expense of the Department.⁸¹

Although the enforcement of the baby chick act is the responsibility of the recently organized Hatchery Inspection Division, the inspection work relates largely to the

⁷⁸ *Code of 1939*, Secs. 7976-7980.

⁷⁹ *Code of 1939*, Secs. 2859, 2872.03.

⁸⁰ In 1940 there were 530 locker plants in Iowa, including 65 branch lockers. These represented an investment of at least \$3,000,000 and handled some 275,000 pounds of food daily.—*Iowa Year Book of Agriculture*, 1940, p. 56.

⁸¹ *Code of 1939*, Secs. 3224, 3225.

enforcement of sanitary standards in hatcheries to prevent the spread of disease among baby chicks. Detailed standards of sanitation are not established by statute, leaving to the Department and its inspectors a large measure of discretion in interpreting and enforcing the law.

Another field of inspectional work which occupies considerable time of the Division of Dairy and Food relates to the enforcement of the pure food laws, the labeling laws, the weights and measures laws, and the regulation of other commodities. This second type of inspectional work requires the measuring of the article tested against certain standards specifically defined by law. Inspections are made of certain foods, commercial feeds, agricultural seeds, commercial fertilizers, insecticides, fungicides, paints, linseed oil, turpentine, petroleum, and gasoline. The enforcement of laws prescribing weights and measures and the inspection of scales and gasoline pumps are of the same nature in that objective standards exist by which the inspector can make tests to determine whether or not the required standards are being observed.

The pure food laws⁸² establish fairly specific standards for certain foods such as butter, imitation butter, renovated butter, various types of cheese, cream, various flavoring extracts, ice cream, other frozen milk products, oysters, and various kinds of vinegar. An extensive and fairly objective definition of food adulteration is provided by statute and all foods defined in the pure food laws of Iowa can be sold only under the name specified in the law. All imitation products are required to be labeled "imitation" and the labeling law which governs all packaged foods establishes specific standards which must be observed. Standards for eggs sold to the consumer are also defined by law.⁸³

⁸² *Code of 1939*, Secs. 3037-3044, 3059, 3060, 3066, 3067, 3068-3070.

⁸³ *Code of 1939*, Secs. 3105-3112.1.

Standards which govern the composition and labeling of commercial feeds are also enforced by the dairy and food inspectors.⁸⁴ An inspection fee of ten cents per ton is levied on all commercial feeds sold or distributed in Iowa excepting certain feeds manufactured in the State. Commercial feeds not subject to the fee include unadulterated wheat, rye, and buckwheat bran; wheat, rye, and buckwheat middlings; or wheat, rye, and buckwheat shorts manufactured in Iowa. All manufacturers of commercial feeds are required to report their sales twice yearly at stated intervals, and pay an inspection fee on the basis of all sales made. All persons selling stock tonics are required to pay an inspection fee of six dollars a year for each product in lieu of the tonnage fee levied on commercial feeds. State inspection tags must be attached to each sack of feed to indicate that the inspection fee has been paid by the manufacturer, but the tag is not a guarantee by the State of the quality or analysis of the feed.⁸⁵

Under the agricultural seeds law of 1941 the Department of Agriculture inspects and tests agricultural seeds. Stringent standards are established for all agricultural seeds sold in Iowa, regulating the age of seed offered for sale, maximum amounts of weed seeds allowable, and the label which appears on seed containers. The inspectors are authorized to make inspections, take samples, and test at any time any agricultural seed offered for sale or transported in Iowa.⁸⁶ The law is primarily a labeling law.

Inspectors of the Department are authorized by a law of 1941 to inspect all fertilizers offered for sale in Iowa, to take samples, and to make analysis of them to determine whether or not the fertilizers tested meet State standards

⁸⁴ *Code of 1939*, Secs. 3113-3120.

⁸⁵ *Iowa Year Book of Agriculture*, 1931, p. 59.

⁸⁶ *Laws of Iowa*, 1941, Ch. 130.

established by law and the regulations of the Department.⁸⁷ No inspection fee is charged for this service.

The official method of sampling and analysis established by the Association of Official Agricultural Chemists is prescribed in the statute as the procedure to be followed by the Department in making chemical analysis of agricultural fertilizers. The Secretary of Agriculture is, however, empowered to change these rules by publishing new regulations for testing. All analyses of fertilizers made by the chemists of the Department are held by the law to be prima facie evidence of their correctness in Iowa courts.

Responsibility for enforcement of the law on standard weights and measures⁸⁸ rests with the Department of Agriculture. Its agents are required to inspect all weights and measures used in any transaction involving the sale of any commodity. An inspection fee of three dollars is charged for the inspection of all scales with a capacity of one thousand pounds or over; ten dollars for railway track scales; and three dollars for all hopper or automatic scales. Additional inspections are to be made, if the Department receives any complaint that incorrect weights and measures are being used, but the Department cannot require payment for more than two inspections per year unless these are requested by the owner or operator.⁸⁹

The regular dairy and food inspectors check all counter and platform scales. Each inspector carries two fifty-pound weights and a kit of twenty-one pound graduated weights. Five special heavy scale inspectors in as many specially equipped trucks make regular inspections of all heavy scales located in Iowa.⁹⁰

⁸⁷ *Laws of Iowa*, 1941, Ch. 131.

⁸⁸ *Code of 1939*, Ch. 161.

⁸⁹ *Code of 1939*, Secs. 3266-3269.

⁹⁰ Information secured during a personal conference with B. O. Brownlee, Chief Inspector, Dairy and Food Division, June 12, 1942.

To enforce this law, the inspector may seize, if necessary, without warrant any weights, measures, scales, or weighing apparatus which does not conform to the State standards or for which the proper license fee has not been paid. Any weighing or measuring apparatus which is found not to be working properly may be sealed by the inspector until repaired. The Department is required to permit reasonable variations for all scales. Minor adjustments to heavy scales are always made by the inspector as a service of the Department. All major repairs must be made by the owner. In such cases, the inspector leaves a special card which must be filled in by the repair man after the scales are repaired and then mailed to the Department.⁹¹

In compliance with the law the Secretary of Agriculture has designated the chief chemist as official State sealer of weights and measures. The head of the chemical laboratory is also responsible for the State weights and measures standards and for the testing of all weights and measures used by the inspectors of the Department. Every ten years the State weights and measures standards are submitted to the Federal Bureau of Standards for certification.⁹²

Gasoline pumps are checked regularly for accuracy by the inspectors of the Dairy and Food Division. The motorist is further protected as to the quality of gasoline and other motor fuels offered for sale. A special motor fuel inspector collects samples from wholesale and retail outlets and makes tests of them in the chemical laboratory. A copy of the test report is always sent to the dealer.

Tests of gasoline and motor fuel will be made by the Department at the request of any wholesale or retail dealer upon submission of a sample accompanied by a fee of two

⁹¹ *Code of 1939*, Secs. 3270, 3273; information secured during a personal conference with B. O. Brownlee, Chief Inspector, Dairy and Food Division, December, 1941.

⁹² *Code of 1939*, Secs. 3227, 3251-3253.

dollars. In 1940, 4392 samples of gasoline from retail pumps were analyzed. In many cases the dealer was ordered to cease selling the gasoline or else add fresh fuel to bring the gasoline up to the required standard. However, the Department reported that the quality of motor fuel generally met the requirements of the law.⁹³

Inspection of illuminating oils and other particular products is regularly carried on by dairy and food inspectors. An inspection fee of not over seven cents per barrel of fifty-five gallons is charged. All such products must meet the standards established by law and the regulations of the Department.⁹⁴

Several other laws of lesser importance establish standards which must be complied with by all persons affected. The agriculture lime law requires the vender to declare in writing the amount of calcium carbonates and magnesium carbonates contained in a shipment of agricultural lime, and the written statement to that effect must not vary more than 10 per cent from the true facts. Samples are analyzed by the chemical laboratory upon request if accompanied by a fee of three dollars. The samples tested must, however, be secured by an inspector of the Department.⁹⁵

Standards regulating insecticides and fungicides sold in Iowa are established by the law of Iowa,⁹⁶ and standards are also fixed for all paints and oils.⁹⁷ The sale of certain bulk commodities such as coal, charcoal, coke, hay, and straw is also regulated. Inspectors of the Department may stop any conveyance transporting such commodities and

⁹³ *Code of 1939*, Secs. 3258, 3266, 5095.01-5095.07; *Iowa Year Book of Agriculture*, 1940, p. 54.

⁹⁴ *Code of 1939*, Ch. 159.

⁹⁵ *Code of 1939*, Ch. 154.1.

⁹⁶ *Code of 1939*, Ch. 157.

⁹⁷ *Code of 1939*, Ch. 158.

order the driver to proceed to a designated scale to check the correct weight of the commodity.⁹⁸

The chemical laboratory of the Department of Agriculture performs a function vital to the successful enforcement of the specific standards established by the laws and regulations. The laboratory is a control agency constantly at work analyzing samples of food, commercial feeds, seeds, fertilizers, agriculture lime, insecticides, fungicides, paints, oils, and all types of petroleum products. The inspectors in the field constantly send in samples of all sorts for thorough analysis by the laboratory. One special inspector of the Dairy and Food Division works out of the laboratory and collects samples of agricultural seeds, agricultural feeds, and gasoline.⁹⁹ In addition, the laboratory analyzes samples sent in by individuals as provided in many laws. Usually a fee is required for such service.

The chemical laboratory coöperates with the Iowa State College of Agriculture and Mechanic Arts in the matter of laboratory testing. Efforts are made to prevent duplication. Much of the seed analysis work of the Department is performed in the seed laboratory of the college. The agricultural seeds law requires the Department and college to coöperate in this matter to prevent duplication of equipment and personnel.¹⁰⁰

The frequency of inspections conducted by the Dairy and Food Division varies from an average of two to three a year for hotels to an average of about seven inspections per creamery each year. In the fiscal year ending June 30, 1923, seventy inspectors of the then independent inspection

⁹⁸ *Code of 1939*, Ch. 162.

⁹⁹ *Iowa Year Book of Agriculture*, 1940, p. 55; information secured during a personal conference with B. O. Brownlee, Chief Inspector, Dairy and Food Division, December, 1941.

¹⁰⁰ *Laws of Iowa*, 1941, Ch. 130, Sec. 10.

services made 97,255 inspections, while thirty-three inspectors made 178,973 inspections in 1938.¹⁰¹

Much of the efficiency of the inspectional activities of the dairy and food inspectors can be attributed to the partial adoption of a system of inspection districts. Before the reorganization of the Department of Agriculture in 1923, specialized inspectors were engaged in the enforcement of each particular law. Since 1923, the State has been divided into inspection districts with a general inspector in charge of each to do inspection work as well as perform any other functions required by the Department. Each inspector is required to live in his district. Thus the Department is able to keep in daily communication with each inspector if the need arises.¹⁰²

Another advantage derived from the use of the district system is that the inspector is able to cover his territory more frequently. As a result of this closer contact with the owners and operators of the establishments inspected, the inspector soon learns which ones will require more attention to secure compliance with the laws. Naturally, they will be inspected more frequently than others.

There are some exceptions to the district system. A force of six hotel and restaurant inspectors operates in as many special hotel and restaurant inspection districts. In addition, the four heavy scale inspectors devote most of their time to testing scales throughout the State, though they do assist the district dairy and food inspectors to check up on the weighing of coal and other bulk commodities. In addition a special inspector from the chemical laboratory collects samples of various commodities to be tested in the laboratory.¹⁰³

¹⁰¹ *Iowa Year Book of Agriculture*, 1924, p. 7, 1938, pp. 13, 14.

¹⁰² *Iowa Year Book of Agriculture*, 1928, pp. 116, 117.

¹⁰³ *Iowa Year Book of Agriculture*, 1928, p. 117.

The district system of inspections, however, has its disadvantages. If the inspector is required to carry on several different types of inspection work at the same time he is not likely to become expert enough. It is not the number of inspections made per year which counts, but the thoroughness and quality of each inspection.

The inspection work performed by the Division of Animal Industry, the Division of Entomology, and the Apiary Division is extensive in scope, requires technical knowledge on the part of the inspectors, and is specialized in nature. The Division of Animal Industry employs licensed veterinarians to perform inspectional work; the State Entomologist and his assistants, and the State Apiarist, professionally trained in their own fields, conduct the inspectional activities of their divisions.

Broad powers are bestowed upon the Division of Animal Industry to enforce the laws which it is authorized to administer. It may make any necessary rules to aid in the suppression and the prevention of infectious and contagious diseases among animals. The division is empowered to investigate all reported law violations. It may and does inspect animals thought to have an infectious or contagious disease, and it is empowered to inspect farm buildings and yards or any other place which might serve as a source of such disease. It is authorized to establish and maintain quarantines against all animals afflicted with or exposed to infectious or contagious diseases. The division is required to regulate and to prohibit the movement into Iowa of stock which has not previously been inspected. It may take summary action to enforce its quarantines and orders. It must employ efficient and practical means to prevent, suppress, control, and eradicate contagious diseases such as tuberculosis, Bang's disease, hog cholera, sheep scab, and numerous other animal diseases. It may hold necessary hearings.

Acting through the Secretary of Agriculture the division is authorized to enter into coöperative agreements with the United States Department of Agriculture to secure aid in the performance of its duties. Finally, the division may call upon the veterinary division of Iowa State College which is authorized by statute to use its equipment and facilities to aid the Division of Animal Industry to perform its responsibilities.¹⁰⁴

The Division of Entomology is responsible for the enforcement of the Iowa crop pest act. It inspects plants and plant products infected with disease or infested with an insect pest. In addition, the division inspects all plant nurseries upon payment of the proper fee and issues certificates of inspection to such nurseries; it establishes and enforces quarantines; makes seizures for violation of its quarantines; and negotiates reciprocal agreements relating to nursery inspection work and elimination of out-of-State inspection fees.¹⁰⁵

The Division of Apiary is responsible for the establishment of quarantines to control bee diseases and for the inspection of bees and bee-keeping appliances. Inspections usually are made only upon written request of any bee keeper. In addition, the State Apiarist is required to carry on educational work relating to the care of bees and the production of honey. The State Apiarist is empowered to issue regulations controlling the transportation of bees without a permit and may even issue a prohibitory order under certain conditions.¹⁰⁶

The scope of the inspection activities of the Division of Animal Industry and the Division of Entomology is broad

¹⁰⁴ *Code of 1939*, Secs. 2643, 2651; *Iowa Year Book of Agriculture*, 1940, p. 82.

¹⁰⁵ *Code of 1939*, Ch. 201.1; *Iowa Year Book of Agriculture*, 1940, p. 97. In 1940, 257 plant nurseries were inspected and granted certificates.

¹⁰⁶ *Code of 1939*, Secs. 4037-4039.6.

and appears to be accompanied by adequate grants of power. They may make rules and regulations necessary to expedite their responsibilities. They are empowered to cooperate with the United States Department of Agriculture in any manner which will aid them in performing their responsibilities. These two divisions possess summary power to destroy menaces to the public health and to establish quarantines as enforcement technique to support their inspectional work. Considerable discretion may be exercised by the two divisions to determine the existence of certain conditions and to decide upon proper remedial action. For example, the Secretary of Agriculture exercises discretion in determining whether, in his opinion, a re-test of any tuberculin tested cattle should be allowed.¹⁰⁷

The inspectional functions of these divisions differ from the inspectional activities of the Division of Dairy and Food in one particular. The inspectors of the Division of Animal Industry and the Division of Entomology not only possess broad powers to determine violations of the laws, but they possess power to engage in control work of varying sorts to eliminate the causal conditions. Thus, if a beekeeper fails to treat or destroy diseased bees upon order of the State Apiarist, the latter is empowered to carry out treatment or destruction.¹⁰⁸ The Animal Industry Division and the Entomology Division may establish quarantines, or abate nuisances endangering the public health.

The successful inspector has been described as a "rare combination of a salesman, an educator, and an artist in human relations."¹⁰⁹ In actual administration the inspectors are the eyes and ears of the Department. The inspectors of today are in reality technicians. They must be

¹⁰⁷ *Code of 1939*, Sec. 2704.1.

¹⁰⁸ *Code of 1939*, Sec. 4039.1.

¹⁰⁹ Leonard D. White's *Introduction to the Study of Administration*, p. 496.

familiar with the laws and rules of the Department which are to be enforced, with all judicial decisions relating to these laws and rules, with the nature of the businesses or activities which are to be inspected, and with the scope and nature of the power to be exercised.

The inspection staff of the Iowa Department of Agriculture is chosen by the Secretary of Agriculture and serves at his pleasure. The practice of appointing political partisans prevails and no career service exists. The general policy is to select as dairy and food inspectors men who have had some previous experience in dairy work,¹¹⁰ but no other technical qualifications are imposed. Inspectors for the Division of Animal Industry are required by law to be licensed veterinarians. The inspection work of the Division of Entomology is handled by men with professional training in that field.

Some effort is being made by the Department to develop a professional group of inspectors. All inspectors of the Division of Dairy and Food go through a two-weeks training school. Two or three days are spent in the office to acquaint a new appointee with the various forms to be filled out, reports to be made, and the laws to be enforced. He then operates for one week in his district under the supervision of the experienced inspector. A second week, or more if needed, of supervision under another inspector follows. In addition, four district conferences are held each autumn. A representative from the office goes over any new laws and problems with the inspectors to insure uniformity of inspection. A general review of the year's work takes place at the annual four-day spring conference held in Des Moines. Problems of each inspector and improvements to be achieved in the coming year are discussed. Bi-weekly service letters are sent to each inspector by the

¹¹⁰ *Iowa Year Book of Agriculture*, 1940, p. 49.

chief inspector. Particular problems arising in any district receive his immediate attention.¹¹¹

THE RULE-MAKING POWER OF THE DEPARTMENT

It is generally conceded that the power to make rules and regulations is essential to the efficient and fair administration of government today.¹¹² The rule-making power of an administrative agency is a practical method of implementing statutory law.

The General Assembly of Iowa has granted to the Department of Agriculture the broad power to "establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of this title [regulation and inspection of foods, drugs, and other articles] and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department."¹¹³

The authority of the Department to establish rules and regulations is limited by the necessity for such rules and regulations. It must be able to show clearly before the courts that its action was necessary and essential to the fulfillment of the purpose of the law. The action cannot be justified merely as a convenience. In a few instances, the authority of the Department to establish necessary rules and regulations is further limited by statutory provisions. The Department is, for example, empowered to establish standards for pure foods when such are not fixed by law, but any standards established must not conflict with those of the Federal Department of Agriculture.¹¹⁴

¹¹¹ Information based on a conference with B. O. Brownlee, Chief Inspector, Dairy and Food Division, June 12, 1942.

¹¹² For discussion of the rule-making power of administrative agencies see James Hart's *An Introduction to Administrative Law*, p. 165, and Ernest Freund's *Administrative Powers over Persons and Property*, Ch. XI.

¹¹³ *Code of 1939*, Sec. 2590.

¹¹⁴ *Code of 1939*, Sec. 3059.

All rules and regulations established by the Department of Agriculture are, with but few exceptions, issued by the Secretary of Agriculture. The State Entomologist is empowered to establish rules and regulations, but must first submit them to the Secretary for his approval before they go into effect. In actual practice, the rules and regulations are drawn up as a result of informal conferences with interested and affected parties, with experts from outside, and the employees of the Department. Immediately upon adoption of any rules or regulations, the Secretary forwards a certified copy to the auditor of each county. The rules and regulations take effect in each county on the day stated in the certified copy. All amendments to the rules and regulations require similar notice.¹¹⁵

Additional procedure is required by statute for the formulation of rules by the Department under its power to control infectious and contagious diseases among animals. The statute requires the publication of any such rules in at least two daily newspapers of general circulation at least one week before the rules take effect. This provision for notice, however, is not applicable in cases of an emergency when immediate action is required. All rules and regulations adopted by the Department under authority granted it by the agricultural seeds law must be preceded by public notice and a public hearing before they become effective. Rules and regulations issued by the Department must also be published and made available to any individual upon request.¹¹⁶

The legal effect of the rules and regulations established by the Department is the same as that of the statutes enacted by the General Assembly and violations of these rules are punishable by the same penalties imposed for vio-

¹¹⁵ *Code of 1939*, Secs. 2592, 2593.

¹¹⁶ *Code of 1939*, Secs. 2590, 2648; *Laws of Iowa*, 1941, Ch. 130, Sec. 11.

lation of statutes in the same field.¹¹⁷ Judicial review of such administrative sub-legislation occurs when a case involving violation of rules established by the Department is taken before the court.

THE PROBLEM OF ENFORCEMENT

Enforcement techniques employed by the Department of Agriculture vary from methods of mild persuasion to coercion. The choice of the technique to be employed is largely determined by the nature and urgency of the problem in question. It has long been the established policy of the Department to enforce the laws by employing methods short of prosecution in the courts whenever this is possible. The Department is not interested in establishing a record for prosecutions, nor does it rely upon fines for financing its activities.¹¹⁸

The extensive licensing power of the Department of Agriculture constitutes an effective enforcement technique which is constantly utilized. The exercise of its power to refuse to grant a license, to refuse to renew a license, to suspend a license, and to revoke a license for cause are concrete examples of the exercise of this particular enforcement method.

The investigatory technique, a second and important means of enforcement, is exemplified by the power of the Department to conduct investigations, to make inspections, and to secure samples of foods and other products for analysis. Although inspection may be followed by an order to some individual to do or to cease to do some particular act, the Department attempts to make the investigatory method effective by education and by persuasion before employing a more formal means of compulsion.

¹¹⁷ *Code of 1939*, Secs. 2663, 3047, 4039.6.

¹¹⁸ *Iowa Year Book of Agriculture*, 1940, p. 24.

Quarantines, as a means of enforcement, are employed by the Division of Animal Industry to control infections and contagious animal diseases and the shipment of livestock; by the Division of Entomology in the control of plant diseases; and by the State Apiarist to control bee diseases.¹¹⁹

Summary police powers are employed as an additional enforcement technique. The term "summary power" designates "administrative power to apply compulsion of force against person or property to effectuate a legal purpose, without a judicial warrant to authorize such action."¹²⁰ Such powers exercised by the Department in the interests of public health to abate public nuisances are not broad in scope and are employed to destroy unsafe biological products, to confiscate incorrect scales, weights, and measures, and to enforce plant quarantines. The Department does not possess any summary police power to seize and destroy adulterated foods, adulterated or impure milk and cream, or articles in cold storage found to be unfit for human consumption.¹²¹

Summary powers which require the issuance by the Department of an order preceding the exercise of the power are exercised by the State Apiarist, the Division of Entomology, and the Division of Animal Industry. Such powers are generally drastic in nature.¹²²

The Department of Agriculture is empowered to issue and enforce a written "stop sales" order to the owner or possessor of any agricultural seed which violates the agricultural seeds law. This order prevents further sale of the

¹¹⁹ *Code of 1939*, Secs. 2649, 2652, 2669, 2700, 2701, 2704.5, 4039.5; *Iowa Year Book of Agriculture*, 1940, p. 83.

¹²⁰ Ernest Freund's *Administrative Powers over Persons and Property*, p. 196.

¹²¹ *Code of 1939*, Secs. 2739, 3270.

¹²² For an example of this power see *Code of 1939*, Secs. 2652-2658, 2668-2671, 4038-4039.3.

seed until the conditions specified in the order are remedied. The owner may appeal from the order to a court of competent jurisdiction for a judgment as to the justification of the order and for the release of the seed. The Department does not possess summary power to destroy agricultural seeds. Only the courts, upon recommendation of the Secretary of Agriculture, can order the seizure and destruction of such seeds, and destruction cannot take place until the owner has been given an opportunity to be heard by the court.¹²³

Injunctions are also utilized as enforcement techniques, particularly to restrain persons from operating hotels, restaurants, or food establishments, or from engaging in the production and sale of dairy products in violation of any provisions of the statutes. No injunction may be issued, however, until the defendant has had at least five days' notice of the application for the injunction and of the time fixed for the hearing. Businesses operating without license may be compelled by an injunction to cease operations until one is secured. The injunction may also be used to restrain a person from operating his business after a third conviction for the same offense under the laws regulating pure food standards, weights, and measures, and establishing standards for other articles.¹²⁴

The Department is empowered to issue subpoenas for witnesses, compel their attendance, and examine them under oath as means of enforcing the laws relating to pure foods and related subjects.¹²⁵

The final and most extreme technique of enforcement is the prosecution of offenders by a county attorney or the Attorney General of Iowa who are charged by law with

¹²³ *Laws of Iowa*, 1941, Ch. 130, Sec. 11.

¹²⁴ *Code of 1939*, Secs. 2855, 3047, 3076.3.

¹²⁵ *Code of 1939*, Sec. 3036.

assisting in the enforcement of the laws administered by the Department of Agriculture. If a county attorney refuses to act, the Governor may, at his own discretion, appoint an attorney to represent the State.¹²⁶ All offenses against the laws administered by the Department of Agriculture are classed as misdemeanors and are punishable by fines generally ranging from five to one hundred dollars or a maximum of thirty days in the county jail or both.¹²⁷

PROMOTIONAL FUNCTIONS OF THE DEPARTMENT

Regulatory functions of government are those which direct or restrict the activities of individuals. Promotional activities of government seek to encourage the development of some particular economic enterprise and thereby advance the general welfare. Government regulatory activities always carry the threat of the use of the police power of the State to compel certain actions. Regulation is essentially negative, to prevent certain specified things from being done or to punish violators; promotion is positive, to encourage certain actions on the part of private interests.

One of the declared purposes for the organization of the new Department of Agriculture was to "encourage, promote, and advance the interests of agriculture"¹²⁸ and much of the licensing and inspection work of the Department is indirectly, at least, promotional in purpose. It is intended to help improve standards of livestock, other agricultural products, and business practices. Any regulatory activity of government which establishes and enforces a set of minimum standards is almost certain to have some pro-

¹²⁶ *Code of 1939*, Secs. 2807, 2856, 3051; *Laws of Iowa*, 1941, Ch. 130; *Iowa Year Book of Agriculture*, 1941, p. 24.

¹²⁷ *Code of 1939*, Secs. 2602, 2663, 2699, 2743, 2762, 2805, 2854, 3047, 3100.46, 3112.7, 3271, 4062.18, 5095.11, 7979, and Ch. 556; *Laws of Iowa*, 1941, Chs. 130, 131.

¹²⁸ *Code of 1939*, Sec. 2587.

motional effect upon the particular economic interest in question.

Considerable promotional activity in the nature of educational work is continually being carried on by the Department of Agriculture. Speakers are furnished for meetings of groups actively interested in Iowa's agricultural welfare. The Department coöperates with the affiliated societies and organizations in this work. It coöperates with the Iowa State College of Agriculture and Mechanic Arts in educational work to promote agricultural progress. Acting through its agents, it is continually urging the adoption of higher standards and of new and approved methods to increase production and to facilitate better distribution. The annual *Year Book of Agriculture* contains considerable information of a promotional and educational nature. Two distinct promotional activities are carried on by the Department in coöperation with the Iowa Butter Control Board and the Iowa Dairy Industry Commission, the Secretary of Agriculture being ex officio a member of both boards.

The Iowa Butter Control Board and the Iowa Dairy Industry Commission exemplify an old practice in Iowa government of establishing relatively independent quasi-public and semi-public bodies to perform functions which are public in nature. The fact that the Secretary of Agriculture is a member of each body gives an opportunity for these two agencies to coöperate intimately with the Department of Agriculture to prevent needless duplication of work.

The Iowa Butter Control Board and the Iowa Dairy Industry Commission are examples of the use of plural bodies to direct a function of government which impinges directly upon private property rights and is beyond the realm of routine administrative work. In both cases, policies have to be formulated which affect property rights and personal interests.

The oleomargarine tax law of 1931 illustrates the use of power of the State to tax for the protection and promotion of a favored industry. An "inspection fee and excise tax" of five cents a pound is levied upon all oleomargarine sold in Iowa. The tax is paid prior to sale by means of tax stamps purchased from the Secretary of Agriculture. The Department of Agriculture is authorized to make all necessary rules and regulations relative to the handling of oleomargarine and the stamp tax. All funds collected under this act are transferred by the Secretary of Agriculture on the first day of each month to the general fund of the State. Violations of the tax law are punishable as misdemeanors.¹²⁹

The primary purpose of the law is, of course, to protect the dairy industry and thereby promote its interest and welfare, but the act serves also as a revenue-raising measure for the State. The statute, as passed in 1931, was the outcome of a four-year campaign fought through three legislative sessions. The 1931 *Iowa Year Book of Agriculture* reported that the passage of the bill "was a great victory for the dairy industry, backed by practically all our agricultural associations."¹³⁰

SUPERVISORY FUNCTIONS OF THE DEPARTMENT

The Department of Agriculture is responsible for the supervision of all farmers' institutes, short courses, and poultry shows which apply for State aid to help finance their activities. The supervision exercised by the Department over these activities is largely ministerial. Farmers' institutes are required by statute to notify the Department

¹²⁹ *Laws of Iowa*, 1931, Ch. 63; *Code of 1939*, Secs. 3100.07-3100.18. Oleomargarine sold in Iowa must conform to the package regulation of the Federal government. Institutions under the Board of Control may not serve oleomargarine.

¹³⁰ *Iowa Year Book of Agriculture*, 1931, pp. 51, 52.

of their intention to function under the law by the second Wednesday of December, short courses by November first, and poultry shows by October first. Each organization is required to submit by June first a complete and detailed statement of its activities, its compliance with the statutory provisions, its expenditures, and other information requested by the Department.¹³¹

These reports are reviewed by the Secretary of Agriculture. If found to meet the statutory requirements as to number of members, officers, income, expenditures, and activities, they are certified to the State Comptroller for payment of State aid in the amount determined by the Secretary, not exceeding the maximum fixed in the statute.¹³²

Supervisory control is also exercised over the 4-H dairy calf club exposition sponsored by the Iowa State Dairy Association, but in this case the State pays only 80 per cent of the amount of the premiums, not to exceed \$2000.¹³³

The Secretary may refuse to certify any association to the State Comptroller if adequate information, in his judgment, is not given; if requirements of the statute are not fulfilled; or if the expenditures are not approved by the Secretary. Certification is, however, seldom refused.

State funds are paid by warrant to the governing body of the organization and this body is responsible for the proper disbursement of the funds except in the case of farmers' institutes. The warrant for such institutes is deposited with the treasurer of the county in which the meeting is held. The county treasurer then establishes a farmers'

¹³¹ For details concerning the eligibility of these organizations for State aid see *Code of 1939*, Secs. 2916, 2919, 2920, 2921, 2923, 2954, 2955, 2956, 2957. Short courses must also submit an itemized list of premiums paid.

¹³² *Code of 1939*, Secs. 2917, 2922, 2955.

¹³³ *Code of 1939*, Ch. 140.1.

institute fund and no expenditures can be made from this fund except by written authorization approved by a majority of the members of the executive committee of the institute.¹³⁴

State grants to farmers' institutes, poultry shows, and short courses amount to only a small share of the money expended in such efforts. The local groups sponsoring these educational and promotional activities contribute on an average of more than twice as much as provided by State grants. The figures for the fiscal year 1938-1939 illustrate this point:¹³⁵

	<i>Number</i>	<i>Amount of State grants</i>	<i>Raised by the local association</i>	<i>Total</i>
Farmers' institutes	82	\$ 4,335.00	\$22,186.72	\$26,521.72
Poultry shows	24	2,550.00	7,652.62	10,202.62
Short courses	30	12,141.06	25,752.64	37,893.70
Totals	136	19,026.06	55,591.98	74,618.04

A slight degree of supervisory control is exercised by the Department of Agriculture over farm aid associations organized under the farm aid associations act of 1913 (as amended) for the purpose of "improving and advancing agriculture, domestic science, animal husbandry, and horticulture."¹³⁶ A complete report of income and expenditures of any farm aid association must be filed with the county auditor by the first Monday in January. A copy of this report, with such additional information as may be required, must also be filed with the Department of Agriculture and the Iowa State College of Agriculture and Mechanic Arts. Books and records of the association may be inspected by the Department and the county board of

¹³⁴ *Code of 1939*, Sec. 2919.

¹³⁵ *Iowa Year Book of Agriculture*, 1939, p. 108.

¹³⁶ *Laws of Iowa*, 1913, Ch. 140; *Code of 1939*, Sec. 2924.

supervisors at any time.¹³⁷ Other than the right to inspect the books of such societies and receive a copy of the society's annual report, the Department of Agriculture has no control over such societies.

More important, perhaps, are the services rendered by the Department to such organizations. They may and do secure advice and assistance from it. Speakers are frequently furnished by the Department. Moreover, these groups give the Department an opportunity to present its viewpoint and to secure support for the Department's activities.

THE SEMI-PUBLIC ORGANIZATIONS AFFILIATED WITH
THE DEPARTMENT

Affiliated with the Iowa State Department of Agriculture are seven semi-public agricultural organizations: the Iowa State Horticultural Society, the State Dairy Association, the Iowa Beef Producers' Association, the Iowa Corn and Small Grain Growers' Association, the Iowa Horse and Mule Breeders' Association, the Iowa Swine Producers Association, and the Iowa State Sheep Association. The Horticultural Society first received State recognition, encouragement, and financial aid in 1872, the Dairy Association in 1909, the Beef Producers' Association in 1911, the Corn and Small Grain Growers' Association in 1917, the Horse and Mule Breeders' Association in 1927, the Swine Producers Association in 1937, and the State Sheep Association in 1943.¹³⁸

Each of the legislative enactments recognizing, encouraging, and giving financial aid to these agricultural organizations stipulates certain conditions which must be met before the association is entitled to receive State funds. A

¹³⁷ *Code of 1939*, Sec. 2939.

¹³⁸ *Laws of Iowa*, 1872, Ch. 25, 1909, Ch. 250, 1911, Ch. 203, 1917, Ch. 187, 1927, Ch. 53, 1937, Ch. 111; Senate File 12, Fiftieth General Assembly, 1943.

membership of five hundred or more must be maintained. Reports must be filed every year with the Secretary of Agriculture concerning the activities, officers, expenditures, and any other information requested by the Department. The Secretary of Agriculture is, by legislative enactment, a member of the executive committees of all these associations. To be eligible for State financial aid, the organizations are required to perform particular functions and activities as specified in the statutes. By administrative practice the State Comptroller requires that all expenditures of State grants made by affiliated organizations be approved by the Secretary of Agriculture before the claim will be allowed.¹³⁹

These affiliated organizations are largely educational and promotional in nature. They perform activities common to trade associations. Most of their work relates directly to their members and others who are interested. These associations cooperate with the extension service of the State College, the United States Department of Agriculture, and the Iowa Department of Agriculture.

Supervisory control is exercised by the Department over these affiliated organizations. The Secretary of Agriculture, as a member of their governing boards, has some influence and check upon their activities. In addition, the Secretary exercises some degree of supervision over their financial activities and administers the provisions of the statutes relating to State aid to these organizations.¹⁴⁰ Annual reports must be submitted to the Secretary who determines whether or not the organizations meet the conditions stipulated in the statutes. The Secretary must approve all expenditures from State funds appropriated to

¹³⁹ *Code of 1939*, Chs. 139, 140, 141, 141.1, 141.2; information from personal communication from Mark G. Thornburg, Secretary of Agriculture, April 13, 1942.

¹⁴⁰ *Code of 1939*, Sec. 2591, paragraph 11.

these organizations and may refuse to approve an expenditure which, in his judgment, is not in harmony with the broad purpose of the statute. This seldom occurs. Approval is of a routine nature.

One further important relationship exists between the affiliated organizations and the Department of Agriculture. Many of them serve, to some extent, as informal advisory boards to the Secretary of Agriculture in legislative matters. This advisory function is not provided for by statute, but is based on usage. The Department has been accustomed to consider the viewpoints of these organizations on all matters affecting Iowa's agricultural interests. This advisory function has developed to the point where the different livestock associations which receive State appropriations have formed a livestock council consisting of the president and secretary of each association. Before the General Assembly convenes, the livestock council meets with the Secretary of Agriculture to discuss, consider, and advise on proposed legislation affecting agriculture.¹⁴¹

The value of such advisory boards in the field of agriculture should not be underestimated. They can serve to keep the administrative agency informed of public opinion. Complaints against activities of the Department, against discrimination, or undue harshness of the enforcement machinery can be more readily expressed through advisory boards. Proposed legislation can be submitted to them for their consideration and suggestions. Legislation to be effective must be acceptable to the people. Advisory boards should help to keep the Secretary informed on what legislation is acceptable to those concerned.

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¹⁴¹ Letter from Mark G. Thornburg, Secretary of Agriculture, May 6, 1942.