

# **Agriculture Law and Technology**

## **State Agriculture Departments and Regulation of Technology**

### **NAAG – Little Rock, Arkansas**

#### **I. State Departments of Agriculture Vary Considerably**

- A. Each state has regulatory and in most cases some promotional and economic development functions vested somewhere in state government. While often housed in a state department of agriculture, other locations include state commerce / economic development agencies, public health agencies, and even university programs.
- B. Depending on the state constitution, legislative history of creation of programs, and the ability of a governor to reorganize state functions and transfer programs and authorities, state agriculture departments evolve over time. Many have become something more than “department of agriculture” by adding other responsibilities including areas like forestry, rural development, and consumer protection.

Very few programs exist in every state department of agriculture. Animal health and the position of the state veterinarian may be in the department, but in other cases are vested in an independent state agency, board, or commission. Plant health, including pesticide and fertilizer regulation, may be in the department but could also be part of an environmental or natural resource agency. Food safety may be housed in the department, or a shared responsibility with the public health or commerce departments. Horse racing could be inside or be part of a gaming control function. Regulation of grain sales and elevators may be part of state commerce. Other variables include:

- 1. The degree to which local units of government have primary or secondary authority, and whether some functions are delegated through the state constitution and statutes from the state to local units. This includes a wide range of areas from food inspection to enforcing dog laws.
- 2. The size, scope, and relative economic and social power of the food and agriculture sector in a state, and what kinds of laws and regulations the sector has encouraged over time to regulate and protect itself. This includes areas like nuisance lawsuit protection for farms and hiring dairy inspectors to ensure that milk can go into interstate commerce.
- 3. The nature of the head of the department. Whether called Commissioner, Secretary, or Director, the head of the agency may be created in the state constitution, elected on a statewide basis, appointed by the Governor for a fixed term, or appointed by and serving at the pleasure of the Governor. There may also be limitations on how many at will or politically appointed deputies and assistants are available to help the head of the agency. The in-house counsel type position may be an at-will position appointed by the head of the agency or may be a career civil service position.

The majority of state departments of agriculture contain the following programs: state apiary (bees), feed, seed, pesticide, fertilizer, plant health, dairy inspection, weights and measures, state organics programs, aquaculture, and some animal health components.

#### **II. Legal Duties and Roles of Attorneys in State Agencies Also Vary Considerably**

- A. There are three main forms:
  - 1. State agencies where there is an in-house counsel and legal staff to represent the agency in legal matters.

2. State agencies where all legal matters are addressed by staff from the state attorney general.
  3. State agencies with a hybrid situation, where attorneys within the department may review and write documents, particularly in areas such as drafting of regulations and responses to freedom of information requests, but who defer to the attorney general's office for representation.
- B. For attorneys working in state government with and for state departments of agriculture, the practice area can be very specialized, such as working only on matters relating to horse racing or to grain dealers. It can also be incredibly varied, with any given day including:
1. Administrative law – includes things like promulgation of rules, questions on open meetings, freedom of information act responses, and overseeing the process for appeals of agency licensing and enforcement decisions. This may also include hearing contested cases on behalf of the head of the agency or drafting of final orders for the head of the agency. The legal office may also serve as the department's legislative liaison representing the agency in front of legislative committees, drafting legislation, and reviewing proposed legislation.
  2. Environmental law – reviewing standards, applications, and enforcement particular to permits on everything from manure lagoons to pesticide drift cases.
  3. Commercial law – reviewing contracts, bids, grant agreements, and other financial matters to ensure compliance with state standards. Depending on the state, this could also include oversight of a state fairgrounds / expo center and all that comes with managing that type of facility, including tort cases. Legal offices may also be involved in intellectual property matters for state developed advertising and promotional efforts.
  4. Civil rights and Privacy – the legal office may include a liaison role to federally recognized Tribes and oversee compliance with state and federal civil rights requirements. They may also oversee compliance with personal privacy standards, including security of cyber information.
  5. Emergency management, safety, and security – in some states, the food and agriculture sector and the state agriculture department are a key part of homeland security efforts. Even if not, the state agency has some functions related to the emergency management areas of prevention, preparedness, mitigation, response, and recovery, and the legal office is likely to be involved in assisting the head of the agency in declaring disasters, issuing quarantines, and related needs. The legal office may also be tasked with ensuring compliance with safety and other worker protection efforts, as well as conducting internal investigations.

### **III. Some Other Areas That Also Vary Considerably**

- A. Some states may adopt federal laws and regulations, or handbooks by reference, while other states are required to reproduce all language word by word into their state statutes and rules.
- B. In some states, a state agency decision or action can be challenged in a local court anywhere in the state. Other states limit lawsuits against the state to a specific court, like the Court of Claims.
- C. Some state agencies have staff that are sworn law enforcement officers who have arrest powers.