

Opinion No. 13-1117

October 2, 1913

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TO: H. L. Bickley, Esq., City Attorney, Raton, N. M.

PUBLIC WEIGHMASTER.

Cities may pass ordinance creating office of public weighmaster.

OPINION

{*294} Your letter of September 13th, submitting question as to the right of cities to pass ordinances creating the office of public weighmaster and imposing penalties for violation, has been referred to me for attention.

In my judgment and opinion the following sub-sections of Section 2402 of the Compiled Laws of 1897 sustain the right of the cities to pass and enforce such an ordinance.

Sub-section 20. To establish market and market houses and provide for the regulation thereof.

Sub-section 23. To provide and regulate the inspection of meats, etc., and other provisions.

Sub-section 24. To regulate the inspection, weighing and measuring of brick, lime, lumber, fire-wood, coal, hay and any other articles of merchandise.

Sub-section 25. To provide for the inspection of weights and measures.

In Davis vs. Town of Anita, 73 Ia., 326, the statutory provisions under which a like ordinance was passed were, first -- to establish and regulate markets, and secondly -- to provide for measuring or weighing of coal, hay or any other article for sale. It was contended that the ordinance designating certain scales as city scales, the appointment of a person as weighmaster, whose compensation was to be provided by resolution, and making it unlawful to sell certain articles without procuring a draft of such article to be made upon city scales, was without authority of law and void.

The court held that the city had such powers under the statutes aforesaid, and further said:

"The power given in substance is to regulate and this implies that the corporation is empowered to do all things essential to the proper exercise of the power expressly conferred." Page Page 327.

And later:

"The statute evidently confers on cities and towns power to provide scales, a competent weighmaster, correct weights and balances, * * *." Page 327.

I found no authorities overruling an ordinance such as is intended, no doubt, to be passed in this matter. The following authorities are a few sustaining such an ordinance under like statutory grant of powers:

City of Lamar vs. Weidman, 57 Mo. App. 57;

Taylor, Cleveland & Co. vs. City of Pine Bluffs, 34 Ark. 607;

Commissioners vs. Sorrell, 46 N. C. 50;

{*295} Coal Cos. vs. St. Louis, 130 Mo. 329;

State vs. Tyson, 111 N. C. 687.

There are some authorities sustaining such an ordinance under the grant of general police powers to the cities on the theory that such ordinances are passed to prohibit and prevent frauds and deception. Even though we had no specific statutory provisions sustaining the right, it could, no doubt, be sustained under the general police powers.

There appears to be no exclusion of rights to such cities and towns in Chapter 82 of the Laws of 1913, but if anything it strengthens the right of the city to such powers.

The Attorney General approves this opinion.