

**Department of Agriculture—Power to Refuse a License to a Warehouseman.**

The Department of Agriculture has authority to refuse to grant a license to a person as a grain dealer when the Department has theretofore revoked the license of another member of the family for cause, and it appears that the application is simply an attempt to evade the order of revocation.

Chester C. Davis, Esq.,  
Commissioner of Agriculture,  
Helena, Montana.

My dear Mr. Davis:

You have submitted to this office the following question:

Where the license of a grain dealer and public warehouseman has been revoked by your Department by reason of the fraudulent conduct of the grain dealer in refusing to settle claims for grain purchased, and the grain dealer subsequently applies for another license in the name of a member of his family, is it compulsory upon your Department to grant the license?

You cite Section 3589 of the Revised Codes of 1921 as authority for your action in this regard. Section 3589 provides, in part, as follows:

"Any person, firm, association, or corporation, who shall engage in or carry on any business or occupation for which a license is required by this act, without first having procured a license therefor, or who shall continue to engage in or carry on any such business or occupation after such license has been revoked (save only that a public warehouseman shall be permitted to deliver grain previously stored with him), shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars, and each and every day that such business or occupation is so carried on or engaged in shall be a separate offense."

Subdivision 8 of Section 3561, in enumerating the powers of the Department of Agriculture, provides:

"To investigate the practices and methods of factors, commission merchants, and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grain, dairy products, eggs livestock, vegetables, or other farm products, to the end that the distribution of such commodities through such factors, commission merchants, and others shall be efficiently and economically accomplished without hardship, waste or fraud."

Under this subdivision, it is apparent that your Department has the power to investigate the conduct of grain dealers.

It has been held that, where a municipal ordinance provided that a license to conduct the business of a junk dealer should not be granted until the police commissioners shall have granted a permit therefor, an applicant for a license to conduct the business of a junk dealer is not entitled to a permit upon compliance with the formal requirements, but that the police commissioners have a discretion which will not be interfered with by the courts in the absence of positive proof of abuse.

Co-operative Junk Co. v. Comm'rs (Cal.) 177 Pac. 308.

In 25 Cyc., at page 603, the following rule is laid down:

"The power given by the legislature to a municipality to regulate and license any occupation includes the power to refuse a license, even where statutory or preliminary requirements are complied with."—Citing:

St. Paul v. Troyer, 3 Minn. 291;

People v. Grant, 126 N. Y. 473, 27 N. E. 964.

And in the case of Carroll v. Campbell, 25 Mo. App. 630, it was held that exclusive power to grant a license includes the power to withhold the same.

In 25 Cyc., at page 622, the rule in regard to discretion in granting or refusing a license is laid down as follows:

"The power vested in the officer or public body to grant licenses, unless mandatory in terms, carries with it the right to exercise a reasonable discretion; but this discretion is to be exercised reasonably, not arbitrarily."

While I find no positive provision in the statute regulating the licensing of grain dealers, which expressly authorizes you to revoke a license, yet, under the provisions above quoted, the inference clearly is that you have this power, and that, if you are satisfied that an individual whose license has been revoked is merely attempting to evade this order by applying in the name of another, you no doubt have the same right to refuse the license as you have in the case where the individual, whose license had been revoked, applies for its renewal in person.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.