

**Opinion No. 173.****Grain Warehousing Act—Processing of  
Wheat Held in Storage—Liability of  
Bonding Company—Liability of Ware-  
houseman — Duty of Department of  
Agriculture.**

HELD: As long as storage contracts are validly outstanding the warehouseman should not dispose of the grain stored and the Commissioner of Agriculture should require that there be sufficient grain on hand to cover them.

Where wheat stored is processed with consent of bailor, the bailor may be assuming a risk for which the bonding company may not be liable without its consent and agreement to be responsible.

---

October 7, 1937.

Hon. J. T. Sparling  
Commissioner, Department of  
Agriculture, Labor and Industry  
The Capitol

Dear Mr. Sparling:

You have asked my opinion upon the following:

“The Livingston Milling and Elevator Company is conducting a public warehouse at Livingston, Montana. It has filed in this office a bond in the amount of \$10,000.00, as required by law. This company has, in its warehouse, wheat upon which the Reconstruction Finance Corporation holds the storage tickets. With the consent and approval of the above corporation, they desire to process all or part of the wheat covered by these storage tickets into food products.

"Will you please inform this office whether, in your opinion, this fully complies with the laws and regulations of the State of Montana governing public warehouses?"

You do not state whether the Reconstruction Finance Corporation will surrender the storage tickets for the wheat which will be processed. So long as storage contracts are outstanding, the warehouseman should not dispose of the grain (Sections 3588, 3588.1 and 3588.2, R. C. M. 1935), and the Commissioner of Agriculture should require that there be sufficient grain on hand to cover such storage contracts (Sections 3589 and 3589.1 Id.).

The storage contract constitutes a bailment and the warehouseman is obligated thereunder, as well as by statute, to return the wheat stored. Since it will be impossible to return the wheat after it has been processed, it would seem that the bailment will be terminated and the storage tickets should be cancelled when such wheat has been processed. If the bailment is terminated, neither the bailor, the owner of the wheat nor the state, in its behalf, can recover from the bonding company for failure to return the wheat. In order that there may be no question raised by the bonding company as to its liability, in case the bailee fails or refuses to pay for the wheat, we suggest that the bonding company give its consent to the new agreement and that it agree to be responsible. The bailor, of course, can make any contract it chooses to make with the bailee but it may contract in such a way as to place itself beyond the protection of the grain warehousing act.

While we find nothing in the statutes which forbids a processing agreement of this kind, or any other special agreement, we are inclined to think that if the bailor makes such an agreement, it may be assuming a risk for which the statute does not protect it, at least without the approval and consent of the bonding company.