Opinion No. 118

Commissioner of Agriculture
Warehousemen — Licenses — Bonds
Held: A warehouseman who receives
        agricultral seed for storage
        during the time the same is be-
        ing cleaned with the under-

standing that the same is to be returned to the owner when cleaned, or purchased by the warehouseman, must procure a license as required by Section 3592.1, Revised Codes of Montana, 1935, and furnish a bond as required by Section 3592.2, Revised Codes of Montana, 1935.

May 5, 1948

Mr. Albert H. Kruse, Commissioner
Agriculture, Labor & Industry
Capitol Building
Helena, Montana

Dear Mr. Kruse:

You have advised that "Several seed warehouses in the State of Montana do not receive agriculture seed for storage only but do receive seed and store it until it can be cleaned and then buy it, or if the owner of the seed so desires, return it to him. They do not charge storage in the strict sense of the word, but they do have in their possession large amounts of agricultural seed that is property of someone else."

You request my opinion whether such warehouses must be licensed and bonded.

Section 3592.1, Revised Codes of Montana, 1935, provides, in part:

"That all persons . . . operating any public warehouse or warehouses . . . and which hold themselves out to the public as receiving agricultural seeds of any kind for storage for the public, shall . . . pay . . . a license fee. . . ."

Section 3592.2, requires the giving of a bond, "in such sum as the commissioner may require, conditioned upon the faithful performance of the acts and duties enjoined upon them by law."

Section 3592.7, provides, "That the storage of agricultural seed under the terms of this act shall constitute a bailment and not a sale and upon return of the warehouse receipt to the proper warehouseman properly endorsed, and upon payment or tender of all advances and legal charges the holder of such warehouse receipt shall

be entitled to, and it shall be compulsory for the warehouseman to deliver to such owner and holder of the warehouse receipt, the identical agricultural seed so placed in said warehouse for storage."

It is very evident that the intention of the legistlature in enacting these statutes was to protect the person who delivers agricultural seed to a warehouse to the extent that the warehouseman shall safely keep such seed and return the same to the owner upon demand and payment of all charges, The statute makes the delivery and redemand and payment of all charges. ceipt of such seed a bailment and enjoins upon the receiver the duty to return the same to the owner.

While it is true that the statute does not specifically provide for a bond under the facts as you have given them, viz., delivery for cleaning and return to owner by the warehouseman, yet it is reasonable to assume that when the warehouseman receives such seed for this purpose and under those circumstances, at least for the time such seed is in his possession, there is a bailment created and the obligation to return the seed or purchase it from the owner. During the time it is in the possession of the warehouseman, under his bailment, he is liable to the owner for the safekeeping of such seed.

Regardless of whether or not the warehousemen "hold themselves out to the public as receiving agricultural seeds . . . for storage, . . ." yet the mere fact that they do receive agricultural seed for storage, for the time at least that they are cleaning the same, they are to this extent warehousemen within the meaning of Section 3592.1, Revised Codes of Montana, 1935, and must comply with this act with regard to license and furnishing bond.

It is, therefore, my opinion that a warehouseman who receives agricultural seed for storage during the time the same is being cleaned with the understanding that the same is to be returned to the owner when cleaned, or purchased by the warehouseman, must procure a license as required by Section 3592.1, Revised Codes of Montana, 1935, and furnish a bond as re-

quired by Section 3592.2, Revised
Codes of Montana, 1935.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General