

Opinion No. 93

**Warehouseman—Liability of Surety—Delivery of Warehouse Receipts
—Deferred Payments—Sections 3-209, 3-220, 3-221, 3-226 and 3-229,
RCM, 1947**

**Held: The surety of a public warehouseman is liable for all grain
purchases when the latter is unable to meet his obligations.**

December 30, 1958

Mr. Albert H. Kruse
Commissioner of Agriculture
Capitol Building
Helena, Montana

Dear Mr. Kruse:

You have requested my opinion on the following question. A holder of warehouse receipts surrenders the receipts to a public ware-

houseman with payment deferred. Is the surety liable if the warehouseman is subsequently unable to meet his obligations?

On receipt of a load of grain every public warehouseman must issue and deliver a warehouse receipt. Section 3-218, RCM, 1947. The delivery of grain for storage constitutes a bailment. Section 3-226, RCM, 1947. See, also, *Whorley v. Patton-Kjose Company*, 90 Mont. 461, 477, 5 Pac. (2d) 210. The contract of bailment terminates when the bailor delivers the warehouse receipts and agrees to deferred payments for the grain. The relationship that then exists is that of seller and purchaser. See, *Spurgeon v. Imperial Elevator Co.*, 90 Mont. 432, 442, 43 Pac. (2d) 891.

Section 3-228, RCM, 1947, requires a bond for all public warehousemen and provides in part that the bond shall be ". . . conditioned upon the faithful performance of the acts and duties enjoined upon them by law." If the statutes governing a public warehouseman require him to pay for grain that he has purchased then his surety is liable for his failure to pay. *American Surety Co. v. Butler*, 86 Mont. 584, 591, 284 Pac. 1011.

Section 3-209, RCM, 1947, requires the commissioner of agriculture to fix and establish grades to apply to all grain bought or handled by public warehouses. Section 3-220, RCM, 1947, authorizes warehousemen to purchase grain at the time of delivery or at a subsequent date. Section 3-221, RCM, 1947, requires warehousemen to deliver the equivalent market value of grain stored in his warehouse upon return of the warehouse receipt properly endorsed. Section 3-229, RCM, 1947, authorizes the department of agriculture to intervene for the holders of warehouse receipts or other evidences of delivery of grain for which payment has not been made when ". . . there is a probability that he will not meet in full all storage obligations or other obligations resulting from the delivery of grain . . ." The obligations are first satisfied from grain stored by the warehouseman and any deficiency is paid: "by the surety upon the bond in such amount as may be necessary for full settlement of warehouse receipts or other evidences of delivery of grain for which payment has not been made . . ." (Section 3-229, RCM, 1947, and *Department of Agriculture v. DeVore*, 91 Mont. 47, 51-52, 6 Pac. (2d) 125.)

In *American Surety Co. v. Butler*, 86 Mont. 584, 593, 284 Pac. 1011, an indemnity for a surety on a track buyer's bond was not liable since the law did not require the track buyer to pay for grain purchased. In determining the obligation of the surety the court distinguished between the duties of a warehouseman and track buyer and stated:

" . . . A warehouseman is charged with the duty of delivering stored grain to the owner, on demand, or paying the market price therefore (Sec. 3588), and, consequently, the commissioner is justified in exacting such a bond as was here given from a warehouseman . . ."

Section 3-229, *supra*, reiterated the liability of a warehouseman's surety contained in Section 3-221, *supra*, when the principal has defaulted in his payments and extended this liability to sureties for track buyers, brokers, agents or commission men. Section 3-229 did not apply in *American Surety Co. v. Butler*, *supra*, since the law was enacted after the indemnity contract had been executed. The contract of indemnity was determined by the law in effect at the time of its execution. However, under Section 3-229, *supra*, securities for track buyers and others merchandising grain now have the same liability as sureties for warehousemen.

Therefore, it is my opinion that the surety of a public warehouseman is liable for grain purchases when the latter is unable to meet his obligations.

Very truly yours,
FORREST H. ANDERSON
Attorney General