

**Elevators—Mortgages—Montana Wheat Growers Association — Wheat — Warehousemen — Warehouse Receipts — Storage.**

Where there is a chattel mortgage on file, which is in force and unsatisfied, the warehouseman is justified in withholding delivery of the stored wheat to the holder of the receipt for a reasonable time to enable him to determine the validity of the claim of the mortgagee, or to institute legal proceedings to compel all the claimants to establish their claims in court.

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

My dear Mr. Davis:

You have submitted the following question to me, and have asked my opinion thereon:

“Is a public warehouseman, under the Montana law, within his rights in refusing to deliver stored grain to the Montana Wheat Growers’ Association, who holds the storage receipts, when there is a mortgage of record covering the wheat?”

Sections 4095 and 4096, R. C. M. 1921, are pertinent to your inquiry. They are as follows:

“4095. If more than one person claims the title or possession of the goods, the warehouseman may, either as a de-

fense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead."

"4096. If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead."

These statutes expressly confer upon the warehouseman the right to withhold delivery when some other person than the holder of the storage receipt claims the title or possession of the goods, or when the warehouseman has information that such other person has a claim to the title or possession thereof. In the first case, he may refuse to deliver the goods and, as a defense to an action brought against him for non-delivery, or in an original suit which he himself may bring, require all the known claimants to interplead and have their rights to the goods adjudicated by the Court. In the second case, the withholding may be only for a reasonable time to allow the warehouseman to determine for himself the validity of the adverse claim, or to bring an action in court to compel all claimants to interplead and have their rights in and to the goods settled by a decree of court.

Does a valid chattel mortgage upon the wheat stored with a public warehouseman, duly filed as required by law, impart to him such information as to warrant the warehouseman to withhold delivery to the holder of the receipt for a reasonable time in order to ascertain the validity of the claim of the mortgagee or to bring legal proceedings to compel the holder of the receipt and the mortgagee to adjudicate their claims in court? Under the subject "Warehousemen," 40 Cyc. 448, it is stated:

"A warehouseman is liable for delivering mortgaged property, which has been stored with him, to the holder of the receipt, although he has no actual notice of the mortgage, if it has been duly recorded, so as to charge him with constructive notice."

See also *Pippin v. Farmers Warehouse Co.*, 167 Ala. 162, 51 So. 882.

It, therefore, appears that the existence of an unsatisfied chattel mortgage on file is constructive notice to the warehouseman of the claims of the mortgagee, and that he is justified in withholding delivery of the wheat to the holder of the receipt for a reasonable time for him to ascertain the validity of the claim of the mortgagee or to institute legal proceedings to have the claims of the holder of the

receipt and the mortgagee determined in court. Of course, the warehouseman in doing so must act in good faith and must not use this privilege, which is provided for his benefit, to arbitrarily oppress, damage or inconvenience the holder of the receipt, using the apparent validity of the mortgage as an excuse, if he in fact knows of its invalidity or that the claim of the mortgagee has in fact been waived or satisfied though not of record, and he is furnished with evidence thereof so as to save him harmless from any future claim of the mortgagee under the mortgage.

Your letter contains some suggestion made to you that, to justify the warehouseman in refusing delivery, he must not only show the existence of the mortgage, but, in addition thereto, that the Association is not acting as the agent of the mortgagee. It is my opinion that this burden would not rest upon the warehouseman. If he has "information" of the claim of the mortgagee, he is justified in withholding delivery for a reasonable time to enable him either to determine for himself the validity of the claim, or to have the rights of the holder of the receipt and the mortgagee determined in court. If he wishes to assume the risk of making a determination for himself, he may do so, or if he prefers he may require the parties to come into court and have their claims determined. If he adopts the latter course, the burden is upon the claimants to establish their rights. All the warehouseman is required to do is to be ready, able and willing to make delivery in accordance with the adjudication of the court.

The object of the law, in granting the privilege of withholding delivery for a reasonable time, is that just such questions as this, and all other questions concerning the validity of the claim, may be determined during that time and in the manner set forth in the statutes. If the warehouseman were compelled to determine these questions beforehand, at his own peril, his statutory rights would be taken away, and he would be compelled to show the validity of the claim of the mortgagee in order to justify his refusal of delivery. Section 4096, supra, provides that he "shall be excused from liability for refusing to deliver" if some one other than the depositor or person claiming under him has a claim to the wheat and the warehouseman has information of the claim. The existence of the claim and information of it justifies the refusal, regardless of the validity of the claim.

It is, therefore, my opinion that in the case where there is a chattel mortgage on file, and which is in force and unsatisfied, the warehouseman is justified in withholding delivery of the stored wheat to the holder of the receipt for a reasonable time to enable him to determine the validity of the claim of the mortgagee, or to institute legal proceedings to compel all the claimants to establish their claims in court.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.