

Elevators—Warehousemen—Grain—Department of Agriculture—Delivery.

Under sections 3588 and 3588 (a), R. C. M. 1921, a grain warehouseman cannot compel the owner of stored grain to accept delivery thereof at terminal against the wish of such owner.

Albert Budas, Esq.,
Member of House of Representatives,
Twentieth Legislative Assembly,
Helena, Montana.

January 12, 1927.

My dear Mr. Budas:

You have submitted to me for an opinion the question whether under the present laws of this state a grain warehouseman has the right to compel the owner of grain to accept delivery thereof at terminal.

The following statutes are decisive of your inquiry: Section 3588, R. C. M. 1921, as amended by chapter 174, session laws of 1925, reads in part as follows:

“Upon the return of the receipt to the proper warehouseman, properly endorsed and upon payment or tender of all advances and legal charges, grain of the grade, quality and quantity equal to that placed by him in store, shall be delivered to the holder of such receipt within forty-eight (48) hours after the facilities for receiving the same have been provided, or at the option of the owner, such warehousemen shall deliver such grain at terminal, or if mutually agreed, the equivalent market value thereof on said date, less any freight and storage charges to terminal, and such other charges as may be allowed by the Commissioner of Agriculture.”

Section 3588 (a), as enacted by chapter 41, session laws of 1923, also provides as follows:

“No such warehouseman shall sell or otherwise dispose of, or deliver out of store, except to the owner, any stored grain, except upon notice, in advance, to the Department of Agriculture, and after complying in full with the laws of the state and the regulations of the Department of Agriculture relating to the handling of stored grain. Any person, firm, association or corporation owning or operating more than one warehouse in this state shall be permitted to make delivery of wheat from one warehouse in settlement of warehouse receipts issued for grain stored in another warehouse, when grain for storage has been presented at any warehouse in excess of its available storage capacity. Provided, that this shall not be construed as conferring upon such warehouseman a right to make delivery of grain of substantially lower value than that delivered for store, though of the same technical grade, in settlement of warehouse

receipts; and provided further, that such warehouseman shall, at all times, keep on hand in bonded warehouses grain of quality and quantity sufficient to settle all outstanding storage receipts."

There can be no question about the meaning of section 3588, above quoted. It plainly states that the warehouseman may deliver grain at terminal only at the option of the owner, thereby precluding any idea of compelling the latter to accept delivery at terminal against his will.

Section 3588 (a) says nothing whatever about delivery at terminal. It gives persons operating more than one public warehouse in this state the right to make delivery of wheat from one warehouse in settlement of receipts issued for grain stored in another warehouse, when grain for storage has been presented in any warehouse in excess of its available storage capacity. This section, in my opinion, clearly has reference to warehouses in Montana and not to terminal elevators, but even if it should be held to refer to terminal warehouses, there is nothing in the section to indicate any intent to repeal that portion of section 3588 which requires such delivery at terminal to be at the option of the owner of the grain.

What the purpose of the first paragraph of section 3588 (a) may have been is not apparent, but speculation as to its meaning is unnecessary for the purpose of answering your inquiry. Certain it is that the legislature could not, if it had sought to do so, confer upon the department of agriculture power to authorize a grain elevator to sell, or deliver out of store, the property of another, without the consent of the owner.

It is therefore, my opinion that under the existing laws of this state a grain warehouseman has no authority to compel the owner of stored grain to accept delivery thereof at terminal against the wish of such owner.

Very truly yours,

L. A. FOOT,
Attorney General.