

Opinion No. 154**Grain—Wheat—Warehousemen— Storage Charges.**

HELD: "Grain" as used in the Storage Act describes wheat, flax, oats, barley, rye and other grains.

"Wheat" as used in Storage Act in determining the storage charges connotes wheat of the highest grade.

April 12, 1933.

You have submitted the following questions:

"1. The law reads that 25% reduction of storage charges is to be made when the market price of wheat being sold is less than fifty cents per bushel in the station. How would this apply to flax, oats, barley, rye, and so forth?"

"2. If it applies to all grains is the price of wheat as figured to be for the highest priced wheat sold or the lowest?"

Section 3579 R. C. M. 1921, as amended by Chapter 35, Laws of 1933, reads in part as follows: "Charges must be made by all public warehousemen subject to the provisions of this act for the handling or storage of **grain**, as follows: * * *". Section 3574 as amended by said chapter in part recites: "Whenever the word 'grain' is mentioned in this act it shall be construed to include flax." Wheat, oats, barley and rye are grain. 28 C. J. 757.

It is therefore my opinion that the storage charges fixed in the above chapter apply to flax, wheat, oats, barley, rye and all other grain except where it is otherwise specifically provided.

Your question No. 2 presents a more perplexing problem in view of the failure of the legislature to be more specific as to what was meant by the word "wheat". Paragraph (e) of Section 3579, supra, as amended, reads as follows: "Twenty-five per cent reduction from the above charges shall be allowed when the market price of **wheat** being sold at point of origin at time of sale is less than fifty cents per bushel".

What is meant by the term "wheat": is it top grade or low grade, the highest grade No. 1, or the lowest grade No. 5, or possibly some lower grade?

It might be said that wheat is wheat regardless of grade or condition. When, however, wheat is used as a basis of comparison with other commodities, or as a standard of values, that quality and grade which is the highest is the test, rather than the lowest. The name for any commodity connotes something of the highest grade or purity in that commodity. Wheat adulterated with water, wild oats, mustard seed, smut, or any other foreign substance, may still be called "wheat" for lack of a better term to describe the admixture and because its part of the bulk may preponderate, but, strictly speaking, such mixture is not wheat.

Moreover, in fixing values according to the custom of the trade, the highest grade of wheat is bought and sold on the commodity exchange and the demand for it determines its price. This price is then used as a basis to determine the prices of the lower grades or adulterated commodities.

In the absence of any express declaration to the contrary, it is my opinion that the legislature, in using the term "wheat" used it according to the custom of the trade and used it to describe that commodity which most nearly approaches purity, and therefore the highest grade wheat.