

**Opinion No. 303****Grain—Warehousemen—Sale of Grain  
—Storage Charges.**

HELD: Prior to passage of Chapter 35, Laws of 1933, a warehouseman had no authority to sell grain when the storage charge equaled the market value of the grain, and his so doing constituted a conversion unless he followed the procedure of Sec. 4111 of the Uniform Warehouse Receipts Act.

August 12, 1933.

You have asked my opinion as to whether a warehouseman, prior to the enactment of Chapter 35, Laws of 1933, amending Section 3588, R. C. M. 1921, was within his rights in selling grain stored with him when the storage charges equaled the market value of the grain.

Where a depositor of grain retains the option to demand the re-delivery of his property or other of like kind and quality, or to sell to the warehouseman, or to whomsoever he wishes, the contract will have to be construed as one of bailment and not of sale. (10 Ann. Cas. 1075, note; 27 R. C. L. 977, Sec. 35, Note 20.) Furthermore, the warehouse receipt prescribed by the department of agriculture specifically provided: "Delivery of grain to warehouseman for storage constitutes bailment and not a sale."

Title to the grain stored was in the depositors. (3 R. C. L. p. 84, sec. 13; 27 R. C. L. 979, sec. 36, note 10 Ann. Cas. 1075). Since the title was in the holder of the storage ticket, the warehouseman was guilty of conversion if he unlawfully disposed of the property stored with him and the holder of a receipt may maintain an action of conversion against him, despite the loss of identity of the grain in question. (27 R. C. L. 981, note 20.)

Chapter 35, Laws of 1933, provides for the termination of all storage contracts on June 30 of each year. It also provides that "in the absence of a demand for delivery, order to sell, or mutual agreement for the renewal of the storage contract entered into prior to the expiration of the storage contract, as prescribed in this Act, the warehouseman shall, upon the expiration of the storage contract, sell so much of such stored grain at the local market

price on the close of business on said day as is sufficient to pay the accrued charges, and shall thereupon issue new storage tickets for the balance of the grain to the owner thereof upon surrender by him of the original storage receipts. Provided, further, that it shall be the duty of the warehouseman on the first day of June of each year to notice all storage ticket holders at their last known address of the provisions of this Act."

There being no statute prior to the passage of this act, which was approved on February 25, 1933, authorizing a warehouseman to sell the grain to pay for the storage, in the absence of the consent of the bailee and in the event of the failure to follow such other procedure as may be prescribed for the sale of property stored, being the Uniform Warehouse Receipts Act, Sections 4079-4126, R. C. M. 1921, the procedure for satisfaction of warehouseman's lien being set forth in Section 4111, it is my opinion that the bailee would have no right to sell the grain stored for the purpose of collecting the storage charges.

The facts of each case, of course, must be considered separately in order to determine the liability of the warehouseman.