

Opinion No. 503**Grain Elevators—Elevators—Licenses
—Chain Store Act.**

HELD: An operator of a grain elevator who sells thereat to members of the public grain, seed, feed and coal, or some or any of them, is engaged in maintaining and conducting a mercantile establishment and must obtain the license and pay the filing and license fees required by Chapter 155, Laws of 1933.

March 27, 1934.

Your request for an opinion regarding the liability of an owner or operator of one or more grain elevators within the State of Montana to pay a license fee or fees under the Chain Store Act, has been received.

Our understanding is that operators of grain elevators not only purchase and store grain in them but they also sell grain, seed, feed and coal out of them to whomsoever needs the same.

Sections 1, 2, 5 and 8 of Chapter 155, Laws of 1933, (the Chain Store Act) are as follows:

"1. That from and after the first day of July, 1933, it shall be unlawful for any person, firm, corporation, association or co-partnership, either foreign or domestic, to operate, maintain, open or establish any store in this state without first having obtained a license so to do from the State Board of Equalization, as hereinafter provided.

"2. Any person, firm, corporation, association or co-partnership desiring to operate, maintain, open or establish a store in this state shall apply to the State Board of Equalization for a li-

cense so to do. The application for a license shall be made on a form which shall be prescribed and furnished by the State Board of Equalization, * * *. If the applicant desires to operate, maintain, open or establish more than one such store, he shall make a separate application for a license to operate, maintain, open or establish each such store, but the respective stores for which the applicant desires to secure licenses may all be listed on one application blank. * * *

"5. Every person, firm, corporation, association or co-partnership opening, establishing, operating or maintaining one or more stores or mercantile establishments, within this state, under the same general management, supervision or ownership, shall pay the license fees hereinafter prescribed for the privilege of opening, establishing, operating or maintaining such stores or mercantile establishments. * * *

"8. The term 'store' as used in this Act shall be construed to mean and include any store or stores or any mercantile establishment or establishments which are owned, operated, maintained or controlled by the same person, firm, corporation, co-partnership or associations, either domestic or foreign, in which goods, wares or merchandise or petroleum products of any kind, are sold, either at retail or wholesale."

The statute, the salient provisions of which are quoted, with the exception of those that fix the fees, is all-embracing. It contains no exceptions.

Our view, then, is that an operator of a grain elevator who sells thereat to members of the public grain, seed, feed and coal, or some or any of them, is engaged in maintaining and conducting a mercantile establishment and must obtain the license and pay the filing and license fees required by the Act.