

**Opinion No. 171.****Warehousemen—Bean Storage Act.**

HELD: Chapter 164, Laws of 1935, has not been superseded by the United States Warehouse Act.

September 24, 1935.

Mr. George L. Knight  
Chief, Division of Horticulture  
Missoula, Montana

You have asked whether Chapter 164, Laws of 1935, the so-called Bean Storage Law, has been superseded by the United States Warehouse Act, Chapter 10, Title 7, U. S. C. A.

You have directed my attention to the fact that under the provisions of Section 3 (Section 243, Chapter 10, supra) of the United States Warehouse Act, it is optional with warehousemen as to whether they should come within the provisions of the law, and that to date only one bean warehouseman had elected to come within its provisions. You state further that there are about 18 or 20 warehousemen licensed by the Montana act who have not elected to come within its provisions.

Attention is called to the fact that there are certain regulations required by the Montana Act, such as grading of beans according to the standards of the United States Department of Agriculture, which are not required by the United States Warehouse Act. You have also directed attention to inequalities which will exist between warehousemen should some be bound by the more strict requirements of the Montana Act, while others are only bound by the Federal Act.

Section 269, Chapter 10, supra, as amended March 2, 1931, eliminated the phrase: "Nothing in this Chapter shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers \* \* \*."

And this section now reads: "In the discretion of the Secretary of Agriculture, he is authorized to cooperate with state officials charged with the enforcement of state laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; but the power, jurisdiction and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect. This chapter shall not be construed so as to limit the operation of any statute of the United States relating to warehouses, warehousemen, weighers, graders, inspectors, samplers or classifiers now in force in the District of Columbia, or in any territory or other place under the exclusive jurisdiction of the United States." (As amended March 2, 1931, c. 366, Sec. 9, 46 Stat. 1465.)

So far as concerns those bean warehousemen, who have not elected to come within the United States Warehouse Act, no question, of course, arises. The United States Department of Agriculture does not assume to exercise any power, jurisdiction or authority over them, and they are, therefore, obliged to conform to the Montana Act.

The question arises as to whether the State of Montana may exercise control over the one warehouseman who has elected to take out a license under the Federal Act, and if so, to what extent.

We have not been able to find any decisions of the courts relative to this question subsequent to the March 2, 1931, amendment, except the case of Alabama Warehousing Company v. State (Ala. June 22, 1933), 149 So. 843. In this case the court held that the Alabama license tax of \$100.00 (a revenue measure) was valid. The court said: "The power to tax for revenue is an attribute of sovereignty and Congress had no authority by the exercise of the police power to impinge or destroy such power inherent in the state over legitimate subjects of taxation within its jurisdiction. To concede such power would make the continued existence of state dependent upon the will of Congress \* \* \* no such authority has ever been

granted to or assumed by Congress." (Citing cases.)

The court said further: "Nor does the Act of Congress, as amended by Act of March 2, 1931, \* \* \* in letter or spirit impinge the right of the state to levy a tax for revenue on private persons or corporations engaged in the business of storing cotton for both inter and intra-state commerce in the states."

In *Independent Gin and Warehouse Company v. Dunwoody*, decided by the Circuit Court of Appeals, 5th Circuit, April 21, 1930, 40 Fed. (2) 1, the court held that the Federal Warehouse Act does not prevent state regulations of agricultural warehousemen, though tending to affect interstate or foreign commerce. The court said:

"The district court, as appears from a memorandum opinion in the record, reached the conclusion that Congress did not intend to occupy the whole field as to the storing, etc., of agricultural products moving in interstate and foreign commerce, and did not intend to exclude the jurisdiction of the states in regulating agricultural houses, or warehousemen, even though such regulations should tend to affect interstate or foreign commerce. We concur in this holding." (Citing cases.)

While the case last cited was decided before the March 2, 1931, amendment, it does not appear from the language of the amendment that Congress intended necessarily to occupy the whole field of regulations of warehousemen. The regulation by Congress is limited by the scope of the Act. In the matter of grading and other regulations imposed by the State Act, under the exercise of its police power, until the Federal government by unmistakable action assumes to occupy the field, the state regulations are effective. Moreover, so far as the facts before us disclose, such grading is required upon delivery for storage and before the beans become the subject of interstate commerce. Hence, the burden is too indirect and remote to transgress Congressional limitations. (*Federal Compress Company v. McLean*, 291 U. S. 17.)

Until a court of competent jurisdiction should hold to the contrary, we

think your department should attempt to enforce such regulations of the Montana Act as are not covered by or are not in conflict with the Federal Act or in conflict with regulations imposed by the Secretary of Agriculture under authority of the Federal Act. From Section 269, supra, as amended, it does not appear that Congress intended to supersede all state laws, but intended rather to cooperate, through the Secretary of Agriculture, with state officials charged with the enforcement of such state laws.