

July 29, 1938.

Hon. James T. Sparling
Commissioner, Department
of Agriculture
The Capitol

Dear Mr. Sparling:

You have submitted a sample warehouse receipt for storage of grain, and inquire if this form of receipt is negotiable under the Montana law.

In 1917 Montana adopted the "Uniform Warehouse Receipts Act" and the fifty-eight sections of the act are enacted by Sections 4079 to 4138, R. C. M. 1935. A negotiable warehouse receipt is defined by Section 4083, R. C. M. 1935 (Section 5 of the Uniform Warehouse Receipts Act), as:

"A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt is a negotiable receipt.

"No provisions shall be inserted in a negotiable receipt that is non-negotiable. Such provisions, if inserted, shall be void."

This section must be read in connection with subdivision (d) of Section 4080, R. C. M. 1935 (Section 2 of the Uniform Warehouse Receipts Act).

Interstate Banking Company v. Brown, 235 Fed. 32.

Section 4080 provides:

"Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms: * * *

"(d) A statement whether the goods received will be delivered to bearer, to a specified person, or to a specified person or his order; * * *."

"Order" is defined in Section 4136, R. C. M. 1935 (Section 56, Uniform Warehouse Receipt Act):

"'Order' means an order by indorsement on the receipt."

The sample copy submitted does not specifically contain a statement that the grain is to be delivered to the order of the owner. The pertinent parts of the receipt are as follows:

"Upon the return of this receipt properly endorsed by the person to

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HELD: Montana form of Warehouse receipts for the storage of grain is negotiable.

whose order it was issued and the payment of the proper charges for storing and handling, delivery will be made in accordance with the provisions on the back of this ticket."

Included in the provisions on the back is:

"2. Delivery to the holder of receipts shall be as provided by the laws of Montana."

In determining whether a receipt is negotiable or not, the whole trend of the law is toward sustaining negotiability. Section 4085, R. C. M. 1935 (Section 7, Uniform Warehouse Receipts Act), provides:

"A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it 'non-negotiable,' or 'not negotiable.' In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

"This section shall not apply, however, to letters, memoranda, or written acknowledgements of an informal character."

Section 4083, *supra*, declares that non-negotiable provisions inserted in a negotiable receipt shall be void. In conformity with such a liberal trend, the courts have held that the clause "upon re-delivery of the above mentioned package to the depositor, the liability of the company will cease" justified an inference that delivery would be made to a specified person, that is, the depositor, and there was therefore substantial compliance with Section 2 (d) of the Uniform Warehouse Receipt Act.

New Jersey Title Guarantee & Trust Co. v. Rector, 75 Atl. 931.

Likewise, the clause "subject to their order hereon and payment of all charges and the surrender of this receipt properly endorsed" was held to be equivalent to the statement that the goods should be delivered to the taxpayer, or his order.

Manufacturer's Mercantile Co. v. Monarch Refrigerator Company (Ill.), 107 N. E. 885.

To the same effect is *Joy v. Farmer's State Bank of Chickasha* (Okla.), 11 Pac. (2) 1074, where warehouse receipts that provided the property covered by the receipt was "to be delivered only on return of this receipt and payment of all charges" were held to be negotiable. The statute is also satisfied by a statement in the receipt that the goods shall be "deliverable only on return of this receipt properly endorsed."

Arbuthnot v. Richheimer & Co. (La.), 72 So. 251;

Smith Bros. v. Richheimer & Co. (La.), 83 So. 255.

See also *Joseph et al. v. P. Viane Company* (N.Y.), 194 N. Y. 235, and *John S. Hale Company v. Beley Cotton Company* (Tenn.), 290 S. W. 994.

Uniform laws must be uniformly construed. On the basis of the above cited cases and the plain intent of the law, it is my opinion that the words contained in the Montana receipt are sufficient to satisfy the requirements of the statute and establish the negotiability of the form of warehouse receipts for storage of grain submitted.