

No. 470

LICENSES—PUBLIC WAREHOUSES—GRAIN DEALERS—FOUR MILLS—WAREHOUSES

Held: One who conducts or operates a flour mill and who purchases all the grain directly from a bonded public warehouse, mills the same into flour, and uses all of the flour so milled in his bakery business is not required to procure a license either as a public warehouseman or as a grain dealer, under the provisions of Section 3589, Revised Codes of Montana, 1935.

August 22, 1942.

Mr. Albert H. Kruse, Commissioner
Agriculture, Labor and Industry
State Capitol
Helena, Montana

Dear Mr. Kruse:

You have requested my opinion whether it is necessary for an operator of a flour mill to procure a license as a public warehouseman, when said operator buys all wheat directly from a bonded public warehouse, mills it into flour and uses all the flour so milled in his own bakeries.

Section 3574 Revised Codes of Montana, 1935, insofar as pertinent here, provides:

“The term ‘public warehouseman,’ shall be held to mean and include every person, association, firm and corporation owning, controlling or operating any public warehouse in which grain is stored or handled in such manner that the grain of various owners is mixed together and the identity of the different lots or parcels is not preserved. The term, ‘grain dealer’ shall be held to mean and include every person, firm, association and corporation owning, controlling, or operating a warehouse, other than a public warehouse, and engaged in the business of buying grain for shipment or milling.”

It would appear, under the facts given, the operator in question is not engaged in the business of operating a public warehouse as that term is defined in the statute, in that grain is not received from the public for storage. May such an operator be considered a “grain dealer,” as that term is defined in the statute, merely because he buys grain for milling?

Section 3574, supra, defines the several characters of businesses covered by the statute. Section 3589, Revised Codes of Montana, 1935, provides for the licensing of such businesses, and—insofar as pertinent here—is as follows:

“ . . . every track buyer, **dealer**, broker, commission man, person or association of persons **merchandising** grain in the state of Montana, shall, on or before the first day of July of each year, pay to the state treasurer of Montana, a license fee in the sum of fifteen (\$15.00) dollars, for each and every warehouse, elevator, or other place, owned, conducted, or operated by such person or persons, firm, co-partnership, corporation or association of persons, **where grain is received, stored and shipped** and upon the payment of such fee of fifteen (\$15.00) dollars, for each and every warehouse, elevator or other place, where grain is merchandised within the state of Montana, the commissioner of agriculture shall issue to such person or persons, firm, copartnership, corporation or association of persons, a license to **engage in grain merchandising** at the place designated within the state of Montana, for a period of one year.” (Emphasis mine.)

Where two sections are part of the same legislative enactment and treat of the same subject-matter, they are to be construed together. (Edwards v. Lewis and Clark County, 53 Mont. 359, 165 Pac. 297.)

The two sections above mentioned were a part of Chapter 41, Laws of 1923. When read together, it is apparent the legislature intended to license (1) those engaged in the business of storing grain for the public and (2) those engaged in the business of merchandising grain.

Webster's International Dictionary defines the term "merchandizing" as follows: "To trade; to carry on commerce; to traffic; to make merchandise of; to buy and sell; to traffic in merchandise."

Under the facts here, the operator is conducting a flour mill for his individual use. He does not store grain for the public, nor does he purchase from the public or the producer. He buys directly from the warehouse, mills the grain into flour and uses the flour in his bakery business. It cannot be said, under these facts, he is engaged in the business of "merchandising grain," as that term is used in the statutes and defined by the dictionary. He, therefore, is not a grain dealer.

It is therefore my opinion that one who conducts or operates a flour mill and who purchases all the grain directly from a bonded public warehouse, mills the same into flour, and uses all of the flour so milled in his bakery business is not required to procure a license either as a public warehouseman or as a grain dealer, under the provisions of Section 3589, Revised Codes of Montana, 1935.

Sincerely yours,

R. V. BOTTOMLY
Attorney General