

**Opinion No. 207.****Mustard Seed—Grain—Department of  
Agriculture—Contracts.**

Held: The storage rates fixed by Section 3579, Revised Codes of Montana, 1935, do not apply to mustard seed, and the rates charged for the storage of mustard seed are a matter of contract to be determined by the parties.

May 9, 1944.

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

Dear Mr. Kruse:

You have submitted to this office the question whether mustard seed is classified as grain in determining storage rates.

Section 3579, Revised Codes of Montana, 1935, enumerates the charges for handling and storage of grain. Section 3579 was originally enacted as Section 25, Chapter 216, Laws of 1921. This chapter provided for the grading, storing, inspection and marketing of grain. Section 20 of Chapter 216, which is now Section 3574, Revised Codes of Montana, 1935, provides in part as follows:

"Whenever the word 'grain' is mentioned in this act, it shall be construed to include flax."

It would appear that the legislature in the use of the word "grain" referred to cereal grains which is the ordinary interpretation of the word and does not include mustard seed. (28 Corpus Juris 757.)

It is to be noted that Section 3592.4, Revised Codes of Montana, 1935, does not include mustard seed in the definition of agricultural seeds, but Section 3593, Revised Codes of Montana, 1935, as amended by Chapter 88, Laws of 1939, includes mustard as an agricultural seed. Section 3593, as amended recites in part, as follows:

". . . the cereals, such as wheat, oats, barley, rye, corn, and hybrid

corn; and miscellaneous crops such as rape, buckwheat, millet, sorghums, mustard, flax . . ."

It would seem from this that the legislature does not consider and include mustard seed when it uses the word "grain."

There is no statutory rate fixed for the storage of mustard seed and it would therefore be left to a matter of contract between the parties.

It is therefore my opinion that the storage rates fixed by Section 3579, Revised Codes of Montana, 1935, do not apply to mustard seed, and the rates charged for the storage of mustard seed are a matter of contract to be determined by the parties.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General