

VOLUME NO. 36

Opinion No. 36

GRAIN — Warehousemen licensed under United States Warehouse Act — WAREHOUSEMEN — Licensed under United States Warehouse Act. Sections 3-208, 3-228.5 and 3-229; 7 U.S.C. 241 et. seq.

HELD: 1. The charges for grain storage which a warehouseman, licensed under the United States Warehouse Act, may impose cannot be regulated by state law. Title 2, Chapter 3, Revised Codes of Montana 1947, remains effective as to persons licensed under the United States Warehouse Act in those areas which are not regulated by the Act, i.e., those activities not confined to the storage of grain.

2. A warehouseman licensed under the United States Warehouse Act may not be required to execute a warehouseman's bond by state law.

3. Section 3-229, requiring intervention by the Montana Department of Agriculture on behalf of grain producers, is not applicable where the injury was caused by a person licensed under the United States Warehouse Act.

October 21, 1975

Mr. George Lackman, Commissioner
Department of Agriculture
1330 Cedar Street
Helena, Montana 59601

Dear Mr. Lackman:

You have requested my opinion concerning the following questions:

1. Is a Montana Public Warehouse exempted of all or in part of the requirement of Title 3, Chapter 2—Standards, Storage and Inspection-Regulation of Grain Warehousemen, if licensed and bonded under the United States Warehouse Act?

2. If a Montana Public Warehouse is licensed and bonded under the U.S. Warehouse Act, will it be exempt from the requirement of Section 3-208, charges of Public Warehousemen?
3. If a Montana Public Warehouse is licensed and bonded under the U.S. Warehouse Act, will it be exempt or meet the requirements of Chapter 2—The Licensing and Bonding of Merchandisers of Grain, particularly the bonding requirement of Section 3-228.5 and Section 3-229, R.C.M. 1947?

All of the questions you ask arise by virtue of the fact that the federal government, in passing the United States Warehouse Act (7 U.S.C. 241 et. seq.), legislated in a field which was previously within the exclusive domain of the states. This legislation provided that a public warehouseman could obtain a federal warehouseman's license, thus giving him the right to operate a public warehouse and subjecting him to the regulations of the Act. The central question then is to what extent may the individual states regulate a warehouseman operating under this federal license. The dispositive case in this area is **Rice v. Santa Fe Elevator**, 331 U.S. 218, 91 L.Ed. 1447 (1947).

Since your first question is stated broadly, actually encompassing your second and third questions, I will address myself to it last.

Your second question inquires whether a warehouseman licensed under the federal act is exempt from the limits on the amount of the fee for storage imposed by state law section 3-208. **Rice** clearly holds that the storage fee which a federally licensed warehouseman may charge is determined under federal law and is not subject to any state laws which may exist.

Likewise, **Rice** specifically holds that if a warehouseman chooses to be licensed under the United States Warehouse Act he is not required to comply with state bonding provisions (3-228.5). Instead, Section 6 of the federal act requires that these persons execute and file a bond with the United States Secretary of Agriculture.

Section 3-229 provides that the Montana Department of Agriculture shall intervene on behalf of grain producers who suffer injury as a result of failure to perform on the part of a Montana public warehouseman. This provision, however, does not obligate—or allow—your department to intervene on behalf of grain producers who chose to conduct business with a federally licensed warehouseman. Section 7 of the United States Warehouse Act provides that any person injured by the breach of any obligation for which a bond is given under the Act may sue in his own name. Absent some specially conferred standing the state has no power to initiate suit on behalf of a citizen.

Your first question called for a general answer as to what extent Title 3, Chapter 2 of the Revised Codes of Montana 1947 applied to warehousemen licensed under the United States Warehouse Act. No precise answer can be given to this question since it is impossible to anticipate all of the possible factual situations which might arise. It can only be stated that our state laws no longer apply to federally licensed warehousemen insofar as the Act has regulated in the same field. Generally this would seem to encompass, but be limited to, those

activities which surround the actual storage of grain in grain warehouses. The rule as stated in **Rice** is:

. . . a licensee under the Federal Act can do business "without regard to State acts", that the matters regulated by the Federal Act cannot be regulated by the States; that on those matters a federal licensee (so far as his interstate or foreign commerce activities are concerned) is subject to regulation by one agency and by one agency alone. . . **Warehousemen electing to come under the Federal Act need serve but one master, and that one the federal agency.** (Emphasis supplied) Id. at p. 234.

It appears from the Act that Congress has pre-empted state laws in regard to the regulation of public warehousemen who choose to be regulated by federal law. It follows that your department has no duties or powers over these warehousemen to the extent that they are engaged in warehousing only. However, the state laws contained in Title 2, Chapter 3 are not limited to the regulation of grain warehousing. These laws also deal with such activities as selling, buying, hauling, shipping, and contracting. (See 3-228.1) Since the United States Warehouse Act limits itself to the regulation of grain storage, the laws of Montana and the powers and duties conferred thereunder are still in full force and effect as against federally licensed warehousemen where the activity conducted is other than storage.

THEREFORE, IT IS MY OPINION:

1. The charges for grain storage which a warehouseman, licensed under the United States Warehouse Act, may impose cannot be regulated by state law. Title 2, Chapter 3, Revised Codes of Montana 1947, remains effective as to persons licensed under the United States Warehouse Act in those areas which are not regulated by the Act., i.e., those activities not confined to the storage of grain.
2. A warehouseman licensed under the United States Warehouse Act may not be required to execute a warehouseman's bond by state law.
3. Section 3-229, requiring intervention by the Montana Department of Agriculture on behalf of grain producers, is not applicable where the injury was caused by a person licensed under the United States Warehouse Act.

Very truly yours,

ROBERT L. WOODAHL
Attorney General