

**VOLUME NO. 36****Opinion No. 89**

**DEPARTMENT OF AGRICULTURE**—Authority to exempt grain merchandiser from licensing and bonding requirements; **GRAIN DEALER**—Grain Merchandiser must license each place of business in the state, whether resident or nonresident; sections 3-228.2 and 3-228.4, Revised Codes of Montana 1947.

**HELD:** The Montana Department of Agriculture does not have legal authority to define a grain merchandising operation within the state of Montana as an “annex” of a North Dakota operation licensed under the North Dakota statutes so as to exempt said operation from the licensing and other grain storage obligation set forth in various sections of Title 3, R.C.M. 1947.

June 22, 1976

Mr. George Lackman, Commissioner  
Department of Agriculture  
Airport Way Building West  
1300 Cedar Street  
Helena, MT 59601

Dear Mr. Lackman:

You have requested my opinion as to whether a grain storage facility located 900 feet west of the Montana-North Dakota border, and which is owned, managed and controlled from the headquarters of a main grain storage facility and office located on the North Dakota side of the state border may be categorized as an "annex" to the company's main facility. The company requests it be licensed and bonded for its total operation and storage capacity (at the locations in both states) under North Dakota state authority with no license or bond obligation to the state of Montana.

More specifically, you request with respect to sections 3-228.2 and 3-228.4, R.C.M. 1947:

Does the Montana Department of Agriculture have legal authority to approve that the Montana grain storage facility in question could be defined as and used as an "annex" to a North Dakota company licensed under North Dakota statutes and therefore exempt the Montana facility from the licensing and other grain storage obligations set forth in various sections of Title 3, R.C.M. 1947?

Section 3-228.2 (1), R.C.M. 1947, provides:

A person may not merchandise grain without obtaining a license under this act and without obtaining a certificate of authority if that certificate is required under section 15-2363, R.C.M. 1947. (Admission of Foreign Corporations)

To "merchandise" means to:

...sell, buy, haul, ship, contract, cause a contract to be let, trade, carry on commerce, traffic, aid and distribute, abet in the movement of any commodity, and assemble and distribute farm products or grain. §3-228.1 (4), R.C.M. 1947.

A person merchandising grain must pay a yearly license fee:

...for each place of business owned, operated, or conducted by the person. §3-228.2 (3), R.C.M. 1947.

That person must also be bonded for each licensed year, prior to licensing, pursuant to section 3-228.5, R.C.M. 1947.

A person merchandising grain without a license or bond as required by statute may be enjoined by the district court, upon petition of the department of agriculture, from merchandising grain until a license and bond are acquired. §3-228.8, R.C.M. 1947.

Reading the clear language of the statutes, a grain merchandiser must license and bond each place operated in the state on a yearly basis or be subject to a possible injunction until such requirements are met, or be subject to penalties under section 3-228.7, R.C.M. 1947. This is so, notwithstanding that that the operation may be considered an annex of another operation within or without the state. The only exceptions to this licensing requirement are set forth in section 3-228.2 (6), R.C.M. 1947, if the person:

- (a) is a producer or a feed lot operator within Montana who buys and hauls grain for his own use, in his own vehicle, for his own feed lot or his farm;
- (b) hauls grain for hire, does not acquire title, and is hauling from an elevator or public warehouse previously licensed.
- (c) hauls grain for hire, for a producer or feed lot operator for producer's or feed lot operator's own use within Montana, and does not acquire title to the grain;
- (d) is a custom combiner hauling grain that he himself combines.

The merchandiser in question does not fall under any of these exceptions.

A nonresident merchandiser must license each operation in Montana, on the same basis as a resident merchandiser pursuant to section 3-228.2 (1), R.C.M. 1947. In addition, a nonresident licensee must appoint an agent for service of process pursuant to section 3-228.4, R.C.M. 1947.

In response to the particular problem which you pose, a grain merchandising operation within Montana must be licensed and bonded under Montana law and is subject to the provisions of Title 3, R.C.M. 1947, regardless of the fact that the Montana operation might be considered an annex of the out-of-state operation.

**THEREFORE, IT IS MY OPINION:**

The Montana Department of Agriculture does not have legal authority to define a grain merchandising operation within the state of Montana as an "annex" of a North Dakota operation licensed under the North Dakota statutes so as to exempt said operation from the licensing and other grain storage obligations set forth in various sections of Title 3, R.C.M. 1947.

Very truly yours,

**ROBERT L. WOODAHL**  
Attorney General