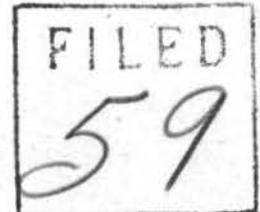


GRAIN AND WAREHOUSE: Operator of elevator storing grain for United States government requesting and obtaining state inspection must obtain state license. Name of each elevator should be shown on state license. License should be displayed in office room of elevator building. It is optional with local public warehouseman whether or not he secures state license. State warehouse receipt may be issued only by licensed public warehouseman on form approved by commissioner. Registrar must be appointed at each place where licensed public warehouse is situated.

December 3, 1948

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Mr. A. E. McInerney  
Grain Warehouse Commissioner  
Missouri Grain Warehouse Department  
Kansas City, Missouri

Dear Sir:

This is in answer to your letters of recent date requesting an official opinion of this department and reading in part as follows:

"(1) Should the operator of and elevator whose entire operation is the storing of grain for the United States Government, the owner or operator of which requests and obtains state inspection and weighing and guarantees the expense thereof, be required to obtain a state license.

"(2) When state licenses are issued to an operator who is operating several elevators in the state, should not the name of each elevator as well as the city or county in which the elevator is located be shown on the license. As an example, we have the Norris Grain Company, who have applied for license to operate the Norris Elevator in Jackson County, the Burlington Elevator in Clay County and the Norris Grain Company Elevator in Webb City. Each license would show the Norris Grain Company as the operator but without showing the name of the elevator to which each license applies could lead to confusion.

"(3) Should not the license be displayed in the office room of the elevator building, and not in the general office of the operating firm. (See Sec. 21 of the Grain Warehouse Department Laws)"

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"I would like to have your opinion of the provision in Section 19. of the Grain Warehouse Department Laws, wherein it states on page 32 'Provided, further that the provisions of this section shall be optional with local public warehouses as defined in the preceding section'..

"Could this provision be construed to mean that it is optional with the operator of a local public warehouse whether or not he secures a license, or, does it mean that it is optional with him whether he secures a Terminal Public Warehouse License or a Local Public Warehouse License.

"I would also like an opinion in connection with Section 27, wherein it states 'Public Warehouse receipts may be issued by any licensed public warehouseman etc.' Does the wording 'may be issued' mean that it is optional with him whether he issues our approved warehouse receipt, and could there be an unlicensed public warehouse within the meaning of the Grain Department Laws.

"Section 38 states that 'The Commissioner, in addition to the registrars located to serve terminal warehouses, may appoint some person or persons, not employees of the Department, at each point where local public warehouses are situated as registrars of receipts, etc.' Does this mean that we would have to appoint a person as registrar at each point where a local public warehouse is situated."

Your first question inquires as to whether or not an operator of an elevator, whose sole business is the storing of grain for the United States government and who requests and obtains state inspection and weighing and guarantees the expense thereof, must have a state license.

Section 16 of the Missouri Grain Warehouse Act, Laws of Missouri, 1941, page 373, defines "public warehouse" and "private warehouse." "Public warehouse" is defined as buildings, elevators or warehouses in this state used for the purpose of storing grain of different owners for a compensation. "Private warehouses" are defined as buildings, elevators or warehouses used for the purpose of storing grain exclusively for the owners or operators of such buildings, elevators or warehouses. We believe the fact that the warehouses about which you inquire in your letter have at the present time only one customer, that is, the United States government, does not preclude such warehouses from being "public warehouses."

Section 2 of the Grain Warehouse Act provides that the state warehouse department shall have exclusive right to weigh or supervise the actual weighing of grain in licensed public warehouses, and may weigh or supervise the actual weighing of grain in private warehouses or industries. Since the department is authorized to weigh or supervise the weighing of grain only in "public warehouses" and "private warehouses," it is obvious that the department is limited to these two types of warehouses. Since this is true, we believe that it was the intention of the Legislature to include within the definition of public warehouses the warehouses which at present store grain exclusively for the United States government.

Section 17 of the Grain Warehouse Act defines "terminal public warehouse" and provides as follows:

"The term terminal public warehouse, as used in this act, shall mean any public warehouse located in any city in this State which now has or may hereafter have a population of seventy-five thousand or more, or a local public warehouse in this state, the owner or operator of which requests and obtains state inspection and weighing and guarantees the expense thereof; provided, any such elevator or warehouse not in excess of one-hundred fifty thousand bushels measured capacity shall be deemed a local public warehouse within the meaning of this act unless the operator thereof shall make application for a license as a terminal public warehouse and shall guarantee the expense of weighing and inspection therein."

Since the definition of "terminal public warehouse" provides that the term includes any warehouse in any city in this state which now has or may hereafter have a population of 75,000 or more, or a local public warehouse, the owner or operator of which requests and obtains state inspection and weighing and guarantees the expenses thereof, we believe it to be obvious that the operator of the grain elevator, whose entire operation is the storing of grain for the United States government and who requests and obtains state inspection and weighing and guarantees the expense thereof, must, under the provisions of Section 19 of the act, procure a state license.

Your second question inquires whether or not the name of each elevator covered by a state license should be shown on such license. We believe it to be clear from Sections 19 and 20 of the act that the name of each elevator should be listed on such licenses.

Your third question inquires whether the license should be displayed in the office room of the elevator building or in the general office of the operating firm.

Section 21 of the act provides that the license shall be displayed "in the office room of said warehouse." It is clear from the quoted provision of Section 21 that the license should be displayed in the office room of the elevator building.

Your fourth question inquires whether the provision "Provided, further that the provisions of this section shall be optional with local public warehouses as defined in the preceding section," means that it is optional with the operator of the local public warehouse whether he secures a license, or whether he secures a terminal public warehouse license or a local public warehouse license.

From the provision of Section 19, we believe that the quoted provision supra about which you inquire means that it is optional with a local public warehouse operator whether or not he wishes to be licensed. If a local public warehouse elevator operator does not wish to come within the purview of the Missouri Grain Warehouse Act, he is not forced to do so and does not have to procure a state license.

Your fifth question inquires as to whether a public warehouseman may issue any warehouse receipt other than that warehouse receipt approved by your department, and whether there could be an unlicensed public warehouse within the meaning of the grain department laws.

From the provisions of Section 27 of the act, it is mandatory that any public warehouse receipt issued by any licensed public warehouseman shall be precisely in the form provided for and approved by the grain warehouse commissioner. As was pointed out supra, if a local public warehouseman does not elect to come within the provisions of the act by securing a state license, he cannot be compelled to do so. However, a state warehouse receipt may be issued only by licensed public warehousemen.

Your sixth question inquires as to whether or not the department must appoint a registrar at each point where a local public warehouse is situated.

Section 38 of the act provides that in addition to the registrar located to serve terminal warehouses, the commissioner may appoint some person or persons, not employees of the department, at each point where local public warehouses are situated as registrar of receipts. We believe the plain meaning of this to be that the commissioner must appoint a registrar at each place where a licensed public warehouse is situated. Since an unlicensed public warehouse is not authorized to issue Missouri warehouse receipts, the commissioner has no power to appoint a registrar at any place where only an unlicensed public warehouse is situated.

#### CONCLUSION

It is the opinion of this department that:

- (1) an operator of an elevator, whose entire operation consists in the storing of grain for the United States government, the owner or operator of which elevator requests and obtains state inspection and weighing and guarantees the expense thereof, is required to obtain a state license;
- (2) the name of the elevator as well as the city or county in which the elevator is located should be shown on each state license;
- (3) the state license of a public warehouseman should be displayed in the office room of the elevator building;

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(4) it is optional with the operator of a local public warehouse whether or not he wishes to obtain a state license and come under the provisions of the Missouri Grain Warehouse Act;

(5) a state licensed public warehouseman may issue warehouse receipts only in the form provided for and approved by the commissioner;

(6) the commissioner must appoint a registrar at each place where a state licensed public warehouse is situated.

Respectfully submitted,

C. B. BURNS, JR.  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

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CBB:VLM