

WAREHOUSEMEN: Existence of outstanding warehouse receipts unrepresented by grain in warehouse, and prosecution therefor.

1-22
January 12, 1934.



Honorable J. B. Hopper,
State Warehouse Commissioner,
317 Board of Trade Building,
Kansas City, Missouri.

Dear Sir:

A request for an opinion has been received from you under date of October 26, 1933, such request being in the following terms:

"As State Warehouse Commissioner, I am charged with the enforcement of the Revised Statutes of Missouri, 1919 Grain and Inspection Laws, as amended 1921, 1925, 1927, and 1929.

These laws make certain provision whereby public warehouses can be licensed and bonded for the purpose of issuing warehouse receipts based on the inspecting and weighing of grain both into and out of the public elevators by employees of the State Grain Inspection and Weighing Department. There are also provided regulations under which the business of public warehouses shall be conducted and penalties for the violation of these regulations. Violations are extremely rare, but when it is realized that in Kansas City alone there are now approximately 25,000,000 bushels of grain on which warehouse receipts have been issued and registered under the supervision of this department, then the importance of sustaining the integrity of the receipts is very evident.

On October 4th, our St. Louis office wired that the Central A. Elevator, located in St. Louis and operated by the Flynn Grain and Feed Company, had been weighed up and checked by our St. Louis office, and that the grain found in the elevator was not equal in amount nor grade to the outstanding warehouse receipts. A conference was held October 9th at which I was requested by the Schreiner Grain Company, the holder of the outstanding warehouse receipts, to permit the loading out of the grain then in the elevator, they agreeing to submit to the Flynn Grain and Feed Company the warehouse receipts for the amounts loaded which in turn were to be cancelled by our Registrar in St. Louis. It being thought advisable to have an opinion from your office on this phase, decision was withheld until a conference could be had with your office, this being accomplished October 10th with your Mr. Reagan, who advised an opinion could not be given without a written request, although the necessity for prompt action was stressed because of possible deterioration of the grain. He did however state the matter should be placed before the circuit attorney of St. Louis. This was done the afternoon of

2. Honorable J. B. Hopper

January 12, 1934.

October 10th, and resulted in our being referred to your assistant Mr. J. H. Lennon in St. Louis, who upon explanation of the circumstances wrote an opinion, copy of which is enclosed.

In line with Mr. Lennon's opinion the grain has been loaded out and there are now warehouse receipts outstanding for which there is no grain in storage in the Central A. Elevator, and with this in mind, Mr. Lennon was again consulted by our letter of October 19th in which was expressed our opinion that the proper procedure to take would be to make written demand in person on the Central A. Elevator Co., for the surrender of the outstanding warehouse receipts for cancellation. Then if they refused to do so, it would be necessary to start prosecution under the State Warehouse Law. Copies of our letter and Mr. Lennon's reply are enclosed. We are also enclosing copy of a letter written by the Fidelity and Deposit Company of Maryland to our Mr. Newell in St. Louis, giving their consent to the disposal of the small amount of grain left in the elevator, after all possible delivery had been made on outstanding warehouse receipts.

In accordance with the fourth and fifth paragraphs of Mr. Lennon's letter of October 23rd, I am submitting the facts in this case, and will appreciate an opinion regarding prosecution and all possible phases entering into it which would influence our policy in handling this particular matter. I believe the important facts have been covered, but please advise if additional information is necessary."

R. S. Missouri 1929, Section 13344 provides as follows:

"Sec. 13344. Receipts - fraudulent - penalty.--ANY warehouseman or elevator-man of any public warehouse or public elevator created by this article, or employe of such warehouse or elevator, or owner or manager connected with same, or any other person who shall be guilty of issuing any warehouse or elevator receipt for any property not actually in such warehouse or elevator at the time of issuing such receipt, or who shall be guilty of issuing any warehouse or elevator receipt in any respect fraudulent in its character, either as to its date or the quantity, quality or inspected grade of such property, or who shall issue a duplicate receipt without marking the same 'duplicate', or who shall forge the registrar's name to an original or duplicate warehouse or elevator receipt, or who shall remove any property from such warehouse or elevator except to preserve it from fire or other sudden danger, without the return and cancellation of any and all outstanding receipts that may have been issued to represent such property, shall, when convicted thereof, be guilty of a felony, and in addition to other penalties prescribed by this article, may be punished by imprisonment in the penitentiary

3. Honorable J. B. Hopper

January 12, 1934.

for not less than two nor more than ten years."

The above statute is self-explanatory, and, as we understand your letter and request, the transaction referred to in such letter and request must be covered by such statute because, as will be observed in the above statute, a definite fraudulent intent is not made necessary for many of the violations defined by such statute.

Section 13354 provides as follows:

"Sec. 13354. Warehouseman or elevatorman - prosecution of duty of prosecuting attorney.--In all criminal prosecutions against a public warehouseman or public elevatorman for the violation of any of the provisions of the article, it shall be the duty of the prosecuting attorney of the county in which such prosecution is brought, or if in the city of St. Louis, the duty of the prosecuting attorney of said city, to prosecute the same to a final issue in the name of and on behalf of the people of the state of Missouri."

Section 13369, which deals with the duties of the Warehouse Commissioner, provides in part as follows:

"* * * Whenever it shall come to his knowledge, or he shall have reason to believe that any law governing the public warehouses or elevators of this state under this article is being or has been violated, he shall cause to be prosecuted or prosecute all persons guilty of such violation.* * *"

Section 13373 provides as follows:

"Sec. 13373. Attorney-general and prosecuting attorney-duty of.-- It shall be the duty of the attorney-general and the state's attorney in every county, if in cases brought in St. Louis, the state's attorney for said city, or on the request of said commissioner to institute and prosecute any and all suits or proceedings which they or either of them shall be directed by said commissioner to institute and prosecute for a violation of this article or any law of this state concerning public warehouses or public elevators as constituted by this article, or the officers, employes, owners, operators or agents of such warehouses or elevators."

We believe that the answer to your inquiry is found in the above statutes. Thus, by Section 13369 it is made the duty of the commissioner to investigate violations of the statutes respecting inspection of warehouses containing grain and to "cause to be prosecuted or prosecute all persons guilty of such violation" which means that it would seem to be the duty of the commissioner to call violations to the attention of the proper authorities for prosecution. The proper authority for prosecution by Section 13354 would be the prosecuting attorney of the county in which the prosecution is brought

4. Honorable J. B. Hopper

January 12, 1934.

and perhaps under Section 13373 of the Attorney General.

It is our opinion that, on our understanding of the facts that warehouse receipts were issued without the property actually being in the warehouse, or that property was removed without return and cancellation of such receipts, that either of such acts would amount to a violation of Section 13344 which provides that such violations are felonies punishable by imprisonment in the penitentiary under Section 13344, and that the proper authority to whom such violation should be reported would be the Prosecuting Attorney of the county where the prosecution is to be instituted, or the Attorney General, and that it would be the duty of the Warehouse Commissioner to make such report.

Very truly yours,

EDWARD H. MILLER
ASSISTANT ATTORNEY GENERAL.

APPROVED:

ATTORNEY GENERAL.