

PUBLIC WAREHOUSES: Determination of Liability of
Bondsmen.

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April 2, 1940



Hon. H. Sam Priest,
Circuit Clerk,
Civil Courts Building,
St. Louis, Missouri

Dear Mr. Priest:

This will acknowledge receipt of your letter of March 21st, in which you quote a letter received by you, which is set out herein:

"As you know our Legislature recently enacted a 'revision act' in connection with our Statute covering operation of Public Warehouses, other than grain.

This revision act, which I understand became effective November 1st, 1939, accordance with the provisions in our statutes, relating to the effective dates of such acts.

This revision act very clearly and concisely states that all warehousemen must obtain a new license, which license shall expire on December 31st, next.

There is a question in my mind as to whether those who failed to comply with this new law were operating without any license at all, and leaving themselves open to the penalties provided in the law for failure to obtain the license, or whether it might be held that they were operating under their old license and bond, at least until they complied with the provisions of the new law.

As you know, the law was ingored by many warehousemen as respects to obtaining new license as of November 1st, and if it is presumed that their old license and bond were operative until December 31st, 1939, when many of them did come in and obtain new license and filed new bond or a legal liability policy, then it is reasonable to assume that the old bond is still in force especially as respects to those who have not taken out new license and filed new bond or legal liability policy.

In order words the new law either by its terms cancells the then existing license and its current bond as of November 1st, 1939, or it does not cancel it at all, either November 1st or December 31st, 1939.

While it is 'presumed' that the new law supercedes the old law and automatically cancells the then existing license which would correspondingly cancell the Bond as to subsequent acts of the principal.

In other words the bond covers a certain LICENSED principal, and does not cover a UNLICENSED principal.

It might be presumed that compliance with the new law by obtaining a new license and a new bond, automatically cancells all subsequent liability under the old license, but this is merely a presumption, because the new revision act does not state this to be a fact.

Therefore, the question I wish to determine is whether the old bond continues in force, and the warehouseman is operating under it (1) Where he has failed to obtain a new license, at all. (2) Whether he operated under the old license and bond, up to the date he complied with the revision act. (3)

Does the fact that the new act failed to specifically cancel the old license and Bond, leave the Surety open to liability until such time as their liability is cancelled by a SPECIFIC order of the Court."

And ask for an opinion as follows:

"As far as I am able to determine I feel that the provisions of the statutes relating to cancellation of liability of sureties must be complied with before such liability terminates, unless of course, the instrument has such termination date in its terms. In other words, I think that such specific orders of Court must be entered before such surety is relieved of further liability.

In view of the many inquiries that I have received on this subject, I would appreciate an opinion from you as to the matters set out in the above quoted letter, particularly in view of the fact that the inquiry therein contained substantially covers the question involved."

Sections 14352, 14353, 14354 and 14355, Chapter 137, R. S. 1929, provided that all warehouses in cities of over 50,000 population wherein other property than grain was stored for compensation should be public warehouses and prescribed the method of procuring a license; provided that bonds should be given by the licenses; and prohibited the operation of such warehouses without license or after the license had been revoked, or had become insufficient or void.

All of these requirements could be changed or revoked at any time.

"A licensed business or privilege, however, is subject to such reasonable regulations and restrictions as may be necessary for the protection of the public in general, or of persons dealing with the licensee."

C. J. Vol. 37, Par. 101, P. 343.

"The grant of the license is a mere naked privilege without consideration, and which the applicant may or may not avail himself of. Therefore, the state may revoke the privilege granted or may impose such conditions on its exercise as are deemed proper or demanded by the public interest."

Simmons v. State, 12 Mo. 269.

The General Assembly by Senate Bill 359, approved July 7, 1939, Laws of Missouri, 1939, pages 928, 929 and 930, repealed these four sections and enacted four new ones, to bear the same numbers. The new sections could not be considered a restatement of existing law as they change the classification of cities in which such warehouses shall be licensed and change the requirements for license, requiring annual application and annual bond.

The law authorizing the issuance of the license, requiring the bond and prescribing penalties for operating without a bond, having been repealed the liability on the bond should terminate.

"There is no question as to the law relied upon by appellants that, where a contract is entered into pursuant to a statute, such statute forms a part of the contract so as to be construed in connection therewith, Aetna Casualty & Surety Co. v. Henslee, 163 Ark. 494, 260 S. W. 414; but the statute under which the contract is made will not be construed as to enlarge the surety's liability beyond the terms of his contract, 50 C. J. 78; Milliron v. Dittman, 180 Cal. 443, 181 P. 779; C. H. Albers Commission Co. v. Spencer, 236 Mo. 608, 139 S. W. 321, Ann. Cas. 1912D, 705; Wood v. Fisk, 63 N. Y. 245, 20 Am. Rep. 528." 52 Fed. (2) 1.c. 119.

CONCLUSION.

It is the conclusion of this Department that no order of court is necessary relieving the sureties on the bonds of warehousemen given in accordance with

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the provisions of Section 14354; that there is no liability under the bonds for acts of the former principal subsequent to the date the repealing act took effect.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General

WOJ:CP