GRAIN INSPECTION:-Method of weighing grain in elevators not considered a violation of the terms of the statute.

1-15

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Hon. J. B. Hopper,
State Warehouse Commissioner,
Kansas City, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

> "Section 6051, of the Grain Inspection and Warehouse laws, Article 11, of Chapter 49, as amended 1921, 1923, 1925, 1927, 1929, reads as follows:
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> 'It shall further be the duty of the person or persons doing a public warehouse or public elevator business under this article, at some convenient time, at least once a year or when ordered by warehouse commissioner, after giving fifteen days' notice, and under the supervision of an authorized state weighmaster and inspector of the state grain inspection department, to weigh and inspect all grain at such time or times then in such warehouse or elevator, and to report to the warehouse registrar the result of such weighing and the actual amount of each kind and grade in such warehouse or elevator. During such time as such weighing is going on, the receiving and shipping of grain into and from such warehouse or elevator shall be discontinued until such general weighing has been completed.'
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> The enforcement of and compliance with this regulation when applied to public warehouses and elevators doing a receiving, storage, and shipping business causes no great inconvenience and can be readily complied with. However, is applying to a public elevator or warehouse connected with a mill which elevator is used for storage and filling the requirements of the mill, the enforcement of this regulation involves considerable difficulty. The main difficulty is the necessity of closing down all milling operations, thereby laying off a number of men for a period dependent entirely upon the physical capacity for handling grain of the connecting elevator, and in

some cases this would mean a period of three or four weeks, and cause considerable expense, inconvenience, and interruption of the mill grinding and carrying on its business. In order to prevent this delay, we are asking an opinion as to the legality of the following procedure.

During such time as the weighing is going on for the purpose of this regulation the unloading or loading out of all grain is stopped, but permitting grain to be taken from the elevator to the mill for grinding purposes, warehouse receipts being cancelled for each amount sent to the mill. It is understood that this movement to the mill does not involve the use of box cars, but is conveyed by means of belts to the mill from the elevator. While this is going on, the contents of each bin or tank, except those being used to furnish the mill grain for grinding, are weighed and inspected and sealed at the bottom to prevent the grain being reweighed, or moved until the entire operation of weighing up has been completed.

During this operation there will have been a number of bins or tanks either entirely or partly emptied as a result of drawing wheat to continue the mill in operation. After all grain, except that in tanks or bins which were used for milling, has been weighed, inspected, and sealed, then the entire plant is closed down to weigh the remnants left in the bins or tanks which were used to continue the mill in operation. This method cuts down the period of mill inactivity to a minimum and permits milling operations for most of the period of the weigh-up. The advantage of this method for the mill operator can be readily seen. There would be a disadvantage because of not having a particular time, date or cutoff for checking outstanding warehouse receipts with the amount and grades in the elevator warehouse receipts with the amount and grades in the elevator at that particular time, and the possibility of some grain being ground into flour which would not meet the receipts surrendered as to grade. However, this is very remote as all grain going into the mill to be ground is inspected by our inspectors.

Another disadvantage of this method would be that it does not comply with the interpretation of the regulations contained in Section 6051. Please bear in mind that under the method described all grain is weighed, inspected and sealed, except that ground into flour, for which grain receipts are cancelled

> as it is run into the mill and graded by our inspectors."

You ask whether the portion of Section 6051, which is now Section 13379, R. S. Mo. 1929, would be violated by the method of weighing as set out in your letter. It is apparent that the purpose of the above section is to ascertain whether or not there is sufficient grain of each kind and grade in the warehouse to cover the outstanding receipts. The statute provides "that during such time as such weighing is going on the receiving and shipping of the grain into such warehouses or elevators shall be discontinued until such general weighing has been completed."

As you point out in your letter, the closing down of the elevator and mill, where there is one in connection with the elevator, is a serious handicap not only to the business of the concern, but is a great expense and hardship upon the employees of the Company. It is apparent from your statement that it often requires three or four weeks to complete the weighing. Under the plan outlined in your letter the receiving and storing of grain is absolutely stopped, and you inquire whether it would be in violation of the section to permit the withdrawal of grain for milling purposes where the receipts are cancelled for the grain withdrawn in order to avoid the stopping of the running of the mills for the three or four weeks involved in doing the weighing. We do not believe it was the intention of the Legislature that such a serious handicap as pointed out in your letter should be inflicted upon the operators of mills in connection with warehouses. The grain withdrawn from the elevator for milling purposes is not shipped within the strict meaning of that word, and we do not believe that the plan outlined by you would be deemed a violation of the statute. We believe that the provision in the statute prohibiting the receiving and shipping of grain in such warehouses and elevators during the weighing period should be construed as directory and not mandatory. The distinction between mandatory and directory enactments is discussed in Bituminous Paving Co. v. McManus, 144 M. A. 593, 607, where the court says:

> "The distinction between mandatory and directory enactments has often been under consideration by the courts. Into which of these classes any given statute falls is to be determined by its character and purpose. If no substantial rights depend upon it and no injury can result from ignoring it, and the purpose of the Legislature can be accomplished in a manner other than as prescribed therein and substantially the same results obtained, then the statute will generally be regarded as directory."

In State ex rel. v. Bird, 244 S. W. 938, 939, it is said:

"Under a more general rule, this construction may be sustained, in that, if a statute merely requires certain things to be done and nowhere prescribes the result that shall follow if such things are not done, then the statute should be held to be directory. The rule thus stated is in harmony with that other well-recognized canon that statutes directing the mode of proceedings by public officers are to be held to be directory and are not to be regarded as essential to the validity of a proceeding unless it be so declared by the law."

The evident purpose of the above section is to ascertain the relationship between the amount of grain in storage and the amount of warehouse receipts outstanding. We believe that the intention of the statute is met and the purpose thereof complied with by adopting the plan outlined in your letter. Since the evident intention of the statute can be carried out for all practical purposes by the plan you outline, in view of the doctrine announced in the above cases, we construe the provisions of the above statute to be directory, and that the method of weighing, as suggested by you, would not be in violation of the law.

We are therefore of the opinion that the provisions of the statute should be construed to be directory and not mandatory, and that the plan outlined in your letter would not be in violation of the statute as construed.

Very truly yours,

Frank W. Hayes

Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S