

State Warehouse Commissioner:

1. Under the Statutes of Missouri the Grain Inspection and Weighing Department must furnish weighing and inspection service to all grain elevators and warehouses qualifying as public elevators or warehouses.

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June 9th, 1934.

Mr. J. B. Hopper,
State Warehouse Commissioner,
317-326 Board of Trade Bldg.,
Kansas City, Missouri.

Dear Mr. Hopper:-

We have your letter of May 17, 1934 in which an opinion was requested as follows:

"The code of the United States for country elevators requires every elevator doing a commercial storage business to license itself either under federal or state warehouse acts. In this connection, we will appreciate very much your prompt opinion as to whether we are compelled under the law to furnish weighing and inspection service to those elevators which may meet the requirements of the law, and obtain state license, but the business of which would not amount to enough to pay our expenses of servicing them.

"The law provides that all grain going in or out of an elevator licensed by the state, must be inspected and weighed, and since there are in Missouri a number of small country elevators which might meet the technical provisions outlined in the warehouse laws, it is very evident that it would be impossible for us to service them without considerable financial loss.

"As this issue is liable to come up in the near future, we will appreciate your prompt attention and reply."

Section 13332, Revised Statutes of Missouri, 1929, provides in part as follows:

"Sec. 13332. Grain to be inspected.--Receipts of grain by public warehouses in all cases shall be inspected and graded by a duly authorized inspector, etc."

Section 13377, Revised Statutes of Missouri, 1929 provides in part as follows:

"Sec. 13377. Commissioner to appoint weigh-masters--duties of.--The commissioner shall appoint suitable persons to act as weighmasters at such places in this state where state grain inspection and weighing may be established in conformity with the provisions of

this article; said weighmasters shall at the places aforesaid, supervise the weighing of all grain which may be subject to inspection and weighing, etc."

Section 13360, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 13360. To make rules and regulations--chief inspector, deputy and assistants to be governed by same--fees to be paid--where.--The chief inspector of grain, the deputy chief inspector, assistant inspectors and other employees in connection therewith, shall be governed in their respective duties by such rules and regulations as may be prescribed by the commissioner, and the said commissioner shall have full power to make all proper rules and regulations for the inspection of grain, not inconsistent with this article, to include the fixing of charges for the inspection of grain and other duties of said chief inspector, deputy chief inspector and assistant inspectors and samplers and to make rules for the collection of same, which charges shall be regulated in such manner as will, in the judgment of commissioner produce sufficient revenue to meet the necessary expenses of the service of inspection and no more."

From a reading of the portions of the above quoted sections it can be seen that the state has no choice but to furnish weighing and inspection service to those elevators or warehouses qualifying as public elevators or warehouses. Fees for such can be charged accordingly in the proper judgment of the commissioner.

The point then arises as to what is to be considered a public warehouse, or what warehouses are to be governed by the laws pertaining to public warehouses.

Section 13327, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 13327. Public warehouses--public warehousemen.-- All buildings, elevators, or warehouses, in all cities in this state having or which may hereafter have a population of seventy-five thousand or more, erected or used, or which may hereafter be erected or used for the purpose of storing or transferring grain of different owners, for a compensation received directly or indirectly, are hereby declared public warehouses, and the person or persons, associations, copartnerships or corporations owning such building or buildings, elevator or elevators, warehouse or warehouses, which are now or may hereafter be located or doing business within this state, as above described, whether said owners or operators reside within this state or not, are public warehousemen within the meaning of this section."

Section 13383, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 13383. Private warehouses defined.--All buildings, elevators or warehouses located anywhere within this state, and which are used for the purpose of storing or transferring grain, or which may hereafter be erected or used for the purpose of storing or transferring grain, and are not so located or conducted as to come within the class of public warehouses as defined by section 13327, R. S. 1929, are hereby declared to be private warehouses."

Section 14367, Revised Statutes of Missouri, 1929 provides as follows:

"Sec. 14367. Certain warehouses declared public warehouses.--All warehouses in this state equipped for handling, receiving, storing, shipping, or re-shipping wheat, or other grain and in which grain is stored for hire, are hereby declared to be public warehouses, and subject to the provisions of chapter 137, R. S. 1929, and all other laws of this state, pertaining to public warehouses: Provided, that this article shall not apply to warehouses used principally for the storage of grain grown by the owner or owners of lessee of said warehouse."

Section 14368, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 14368. All private warehouses subject to laws of state pertaining to public warehouses.--All private warehouses in this state equipped for handling, receiving, storing, shipping, or re-shipping of wheat, corn, or other grain, having a storage capacity sufficient for the storage of 25,000 bushels of wheat, corn, or other grain, located in any city of this state now or hereafter having more than 5,000 inhabitants, or within ten miles of any such city and in which grain is stored for hire, are hereby declared to be public warehouses, and as such subject to the provisions of chapter 137, R. S. 1929, and all other laws of this state pertaining to public warehouses."

Section 13327 above quoted was enacted in 1915 (Laws Missouri 1915, p. 302), and Section 13383 above quoted was enacted in 1921 (Laws Missouri 1921, 1st Ex. Sess. p. 70). Sections 14367 and 14368 above quoted were enacted in 1923 (Laws Missouri 1923, p. 79).

A reading of these four sections shows that the first two are repugnant to and inconsistent with the latter two, and vice versa, in that different rules are set out for the classification of public warehouses. Obviously the sections cannot be reconciled or stand together; the definition must be the one or the other.

Mr. J. B. Hopper

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This being the case it is a well recognized rule of law in this state that the 1923 sections must prevail. Where two statutes dealing with the same subject-matter are in conflict so that both cannot be operative, the later act will be regarded as a substitute for the earlier and will operate as a repeal by implication.

See State v. Stell, 14 S. W. (2d) 515.

State ex rel. v. Public Service Commission of Missouri, 275 Mo. 60.

The only suggestion we can make is that you make sufficient charges for your service to avoid any financial loss.

Very truly yours,

CHAS. M. HOWELL, Jr.
Assistant Attorney General

CMHJr:LC

Approved:

Attorney General.