



STATE OF KANSAS

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April 22, 1981

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ATTORNEY GENERAL OPINION NO. 81- 96

Mr. Donald R. Watson
Director, Warehouse Division
Grain Inspection Department
535 Kansas Avenue, 8th Floor
Topeka, Kansas 66603

Re: Grain and Forage -- Inspecting, Storing, Weighing
Grain; Warehouses -- Additional Indemnity Fund for
Public Warehousemen

Synopsis: The legislature may require funds in addition to
personal bonds from public warehousemen for the
purpose of creating an indemnity fund on all such
warehousemen. Cited herein: K.S.A. 34-229, Kan.
Const., Art. 2, §1, U.S. Const., Amend. XIV.

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Dear Mr. Watson:

You inquire as to the power of the state legislature to enact a statute which would require public warehousemen to contribute money for an indemnity fund which would be in addition to the warehousemen's bond imposed pursuant to K.S.A. 34-229. You state that House Bill No. 2390 is such an enactment, and is being considered by the legislature at this time. It is the legality of that part of House Bill No. 2390 which imposes additional funding requirements for the indemnity fund on public warehousemen with which you are concerned.

The state legislature's power is granted by Article 2, Section 1 of the Kansas Constitution, which states: "The legislative power of this state shall be vested in a house of representatives and senate." The Kansas Supreme Court has given this power the broadest possible interpretation. In Ratcliff v. Stockyards Co., 74 Kan. 1, (1906), the court stated:

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"There are no limits upon the legislative power of the legislature of the state, except such as may be found in the state and federal constitutions." Id. at Syll. 3.

Both state and federal courts have spoken on the issue of regulation of public grain warehouses. In Millers National Insurance Co. v. Bunds, 158 Kan. 662, (1944), the Kansas court stated:

"It requires no citation of authority to support the proposition that warehouses maintained for the storage of goods and merchandise offered for such purpose are proper subjects for state regulation, as being affected with a public interest." Id. at 666.

In Budd v. New York, 143 U.S. 517, 12 S.Ct. 468, 36 L.Ed. 247, (1892), the U.S. Supreme court stated thus:

"On the testimony in the cases before us the business of elevating grain is a business charged with a public interest, and those who carry it on occupy a relation to the community analogous to that of common carriers

"The elevator is devoted by its owner, who engages in the business, to a use in which the public has an interest, and he must submit to be controlled by public legislation for the common good." 36 L.Ed. at 256.

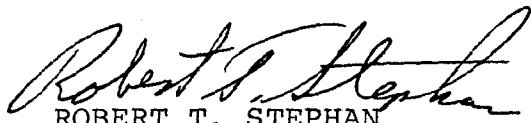
Thus, state regulation in this area is generally within the legislature's power and not violative of the state and federal constitutions.


We note, however, that numerous arguments might be raised concerning the constitutionality of a particular law, ranging from the propriety of the manner of enactment of the law to interference with interstate commerce and violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Such arguments are not raised by your rather general inquiry or obvious from the face of the proposed legislation. Such criticisms are not attacks on the power of the legislature to act in this area, but rather, are challenges to a particular method of regulation. Such constitutional considerations are clearly beyond the scope of your request. Hence, because we find no constitutional prohibitions, and Kansas law presumes that acts of the legislature are valid [see Stelling v. Kansas City, 85 Kan. 397 (1911)],

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we must conclude that the imposition of an assessment on all Kansas public warehousemen for a blanket indemnity fund is within the power of the Kansas Legislature.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Bradley J. Smoot
Deputy Attorney General

RTS:BJS:hle