



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 85- 184

Marvin R. Webb, Director
Grain Inspection Department
235 S. Topeka
P.O. Box 1918
Topeka, Kansas 66601-1918

Re: Grain and Forage--Inspecting, Sampling, Storing,
Weighing and Grading Grain; Terminal and Local
Warehouses--Lost or Destroyed Receipts; Indemnity
Bonds

Synopsis: K.S.A. 34-257a establishes a procedure by which
a lost or destroyed negotiable warehouse receipt may
be replaced by a duplicate receipt. One of the
requirements which a claimant for a duplicate must
meet is the filing of a bond conditioned to indemnify
the warehouseman against any loss occasioned by the
issuance of such duplicate receipt. The statute does
not indicate the length of time for which such bond
must remain in effect. In that there is no time limit
during which a negotiable warehouse receipt must be
negotiated, the bond technically should be maintained
as long as the receipt is outstanding. Realistically,
however, storage fees and other expenses incurred by
the warehouseman will eventually consume the value of
the grain for which the warehouse receipt and its
duplicate were issued, so that the bond will no longer
be necessary for the warehouseman's protection.
Cited herein: K.S.A. 34-244; 34-254; 34-257a;
34-266; 34-276.

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Dear Mr. Webb:

As Director for the Grain Inspection Department, you request our opinion regarding the length of time for which an indemnity bond, issued pursuant to K.S.A. 34-257a, must be maintained.

K.S.A. 34-257a provides in pertinent part as follows:

"Where a negotiable warehouse receipt has been lost or destroyed, the warehouseman shall issue a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued, and a plain and conspicuous statement that it is a duplicate receipt issued in lieu of a lost or destroyed receipt, upon compliance by the claimant with the following conditions:

"(a) Before issuing a duplicate receipt, the warehouseman shall require the claimant therefor to make and file with him . . .

"(2) a bond in the amount double the value, at the time the bond is given, of the grain represented by the lost or destroyed receipt. Such bond shall be in the form approved by the director and shall be conditioned to indemnify the warehouseman or any holder or other person entitled to the grain against all loss, liability or expense which he may sustain by reason of the issuance of such duplicate receipt. Such bond shall have as surety thereon a corporate surety company which is authorized to do business under the laws of the state of Kansas and is subject to service of process in this state in a suit on the bond." (Emphasis added.)

Neither this statute nor those immediately preceding or subsequent to it indicate the length of time for which the required bond must remain effective. Technically, the duplicate warehouse receipt for which the bond is issued, just as any original negotiable warehouse receipt, would remain negotiable until canceled. See K.S.A. 34-244 and 34-254.

Cancellation does not occur until the warehousemen delivers the grain for which he has issued the receipt. Given the purpose of

K.S.A. 34-257a, which is to protect warehouseman from any loss occasioned by the issuance of a duplicate receipt, and the fact that there is virtually no time limit during which a negotiable warehouse receipt must be negotiated, the bond required by K.S.A. 34-257a should be maintained in perpetuity.

There is, however, a possible situation in which a negotiable warehouse receipt may lose its negotiability short of cancellation. K.S.A. 34-276 provides as follows:

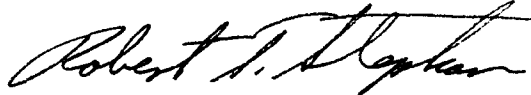
"After the grain has been lawfully sold to satisfy warehouseman's lien, or has been lawfully sold or disposed of for any other cause, the warehouseman shall not thereafter be liable for failure to deliver the grain to the depositor or owner of the grain, or to a holder of a receipt given for the grain when it was deposited, even if such receipt be negotiable. After such lawful sale, the proceeds of such sale, after deducting any lawful liens, shall be held for the benefit of the owner, or the holder of the receipt or receipts."

Pursuant to K.S.A. 34-266, a warehouseman has a lien on grain deposited for all lawful storage charges as well as other listed fees and expenses. Thus, even if there are two receipts outstanding for the same grain, eventually the value of the grain for which the receipts were issued will be consumed by the unpaid storage costs. If and when this occurs, there will no longer be a need to maintain the bond because the warehouseman will be relieved of liability under K.S.A. 34-276.

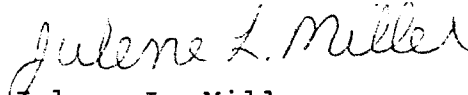
In conclusion, there are no Kansas statutes or case law which clearly set the length of time for which an indemnity bond issued in conjunction with a duplicate negotiable warehouse receipt must be maintained. In that a negotiable warehouse receipt remains negotiable until cancelled, it is our opinion that the bond should remain in effect in perpetuity. Realistically, however, storage fees and other expenses incurred by the warehouseman will eventually consume the value of the grain for which the warehouse

receipt and its duplicate were issued, so that the bond will no longer be necessary for the warehouseman's protection.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Assistant Attorney General

RTS:JSS:JLM:jm