



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 71

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 -- Power of the Director of the Grain
Inspection Department to Require Additional
Security of a Grain Warehouse Operator Petitioning
a Chapter 11 Bankruptcy

Synopsis: The Grain Inspection Department may require
additional security of a grain warehouse operator
who is currently petitioning for bankruptcy under
Chapter 11 of the United States Code. Cited
herein: 11 U.S.C. §301; §302; §303; §362; K.S.A.
1985 Supp. 34-228(b)(1); 34-229(e); 34-2,100.

* * *

Dear Mr. Webb:

As Director of the Grain Inspection Department, you request
our opinion on a question concerning grain warehouse
security. Specifically, you inquire whether the Grain
Inspection Department may require additional bond or security
of a licensed operator of a grain warehouse who is currently
petitioning the federal courts under Chapter 11 bankruptcy.

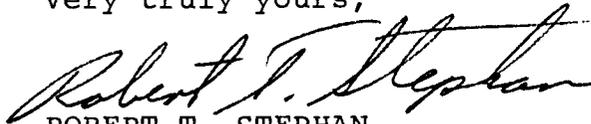
A petition filed voluntarily, jointly or involuntarily under
Chapter 11 of the United States Bankruptcy Code normally
operates as an automatic stay applicable to all entities.

(See 11 U.S.C. §301, 302, 303 and 362.) However, the Grain Inspection Department is not stayed from enforcing its police or regulatory power while a petitioner pursues bankruptcy under Chapter 11. 11 U.S.C. §362(b)(4).

The director, in determining "that any bond given by any warehouseman is inadequate and insufficient security against any loss that might arise under the terms of the bond . . . shall receive any additional bond that the director considers necessary to provide adequate security." K.S.A. 1985 Supp. 34-229(e). The director may base his decision upon the financial condition of the licensed operator. (See K.S.A. 1985 Supp. 34-228(b)(1) and 34-2,100, granting the director the power to receive a financial statement from a license applicant, and the power to regulate warehouse operators through adoption of reasonable rules and regulations.)

In our opinion, given the Chapter 11 status of the warehouse operator in the case at bar, a request for additional security is within the power of the director and a reasonable exercise of the Director's discretion in light of the operator's financial situation.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Thomas Lietz
Assistant Attorney General

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