



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89- 29

T.D. Wilson, Director
Kansas Grain Inspection Department
700 Jackson, Suite 800
P.O. Box 1918
Topeka, Kansas 66601-1918

Re: Grain and Forage -- Inspecting, Sampling, Storing,
Weighing and Grading Grain; Terminal and Local
Warehouses -- Warehouseman's Bond; Release from
Liability

Synopsis: The Kansas Grain Inspection Department has no
authority to release a surety company from all
liabilities on a public warehouseman's bond. Cited
herein: K.S.A. 34-223; K.S.A. 1988 Supp. 34-228;
34-229; K.S.A. 34-230.

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Dear Mr. Wilson:

As Director of the Kansas Grain Inspection Department
(KSGID), you have requested our opinion whether the KSGID
may release from liability surety companies which provided a
public warehouseman's bond.

Kansas law requires a public warehouseman to be licensed by
the KSGID. K.S.A. 1988 Supp. 34-228. A "public
warehouseman" is a person "lawfully engaged in the business of
storing grain for the public." K.S.A. 34-223(1). Applicants
for a public warehouseman license are required to "file with
the director a bond with good corporate surety qualified under

the laws of the state of Kansas. . . ." K.S.A. 1988 Supp. 34-229(a). See K.S.A. 34-230(a)(1). K.S.A. 1988 Supp. 34-229(c) provides as follows:

"The bond shall be in favor of the state of Kansas for the benefit of all persons interested, their legal representatives, attorneys or assigns and shall be conditioned on the faithful performance of all the licensee's duties as a public warehouseman and such additional obligations as assumed by the warehouseman under contracts with a federal agency relating to storage of grain in each warehouse. Any person injured by the breach of any obligation of the warehouseman may commence suit on the bond in any court of competent jurisdiction to recover damages that the person has sustained, but any suit commenced shall either be a class action or shall join as parties plaintiff or parties defendant or other persons who may be affected by such suit on the bond. No bond shall be cancelled by the surety on less than 60 days' notice by mail to the director and the principal except that no such notice shall be required for cancellation of any bond by reason of nonpayment of the premium thereon. The liability of the surety on the bond may continue for each successive license period the bond covers. The total liability of the surety shall be limited to the amount stated on the current bond or on an appropriate rider or endorsement to the current bond. It is the intent of this statute that the bonds be nonaccumulative, that stacking of bonds not occur in excess of the face value of the current bond." (Emphasis added).

You state that if a warehouseman's bond is cancelled, or if a warehouseman changes surety companies, many surety companies continue to hold and will not release the collateral unless the KSGID provides the companies an unconditional release from all liabilities. The question presented is whether the KSGID has authority to provide such a release from liability.

A state agency is a creature of the legislature and as such has only those powers provided to it by statute. Pork Motel, Corp. v. Kansas Dept. of Health & Environment, 234 Kan. 374, 378 (1983). See Malone Oil Co. v. Department of Health & Environment, 234 Kan. 1066, 1068 (1984); Halford v. City of Topeka, 234 Kan. 934, 940 (1984). Cf. Tew v. Topeka Police & Fire Civ. Serv. Comm'n, 237 Kan. 96, 100 (1985). Neither the KSGID nor its director have statutory authority to release a surety company from potential liabilities. In addition, the purpose of the bond requirement is to provide a source of funds for persons who have been "injured by the breach of any obligation of the warehouseman." K.S.A. 1988 Supp. 34-229(c). Only the holder of a claim can release another from liability. Therefore, the State of Kansas cannot release a surety company from potential claims that may be brought against the bond.

Very truly yours,



ROBERT T. STEPHAN
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