

N.D.A.G. Letter to Tallackson (Dec. 3, 1987)

December 3, 1987

Senator Harvey D. Tallackson
District 16
P.O. Box 288
53 West Fifth
Grafton, ND 58237

Dear Senator Tallackson:

Thank you for your letter of June 12, 1987, concerning the warehouseman license requirements for Alchem, Ltd. I apologize for the delay in responding.

You indicate in your letter that Alchem, Ltd., is the processor of corn, wheat, barley and potatoes. Alchem, Ltd., processes these products into ethanol and animal feed. You request my opinion on whether Alchem, Ltd., and others similarly situated are required by law to be licensed and bonded as public warehousemen.

Public warehouseman is defined as "[t]he person operating a public warehouse . . ."
N.D.C.C. § 60-02-01(6).

Public warehouse is defined by N.D.C.C. § 60-02-01(5) as:

any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility in which grain is received for storing, buying, selling, or shipping for compensation. Provided, however, that nothing in this chapter shall be construed to require a warehouseman doing manufacturing business only, to receive, store, or purchase any kind of grain at said mill.

(Emphasis added.)

Grain is defined by N.D.C.C. § 60-02-01(3). The definition includes grain used by Alchem, Ltd. The only exclusion is grain being cleaned and processed for use as seed, for which a warehouse receipt has not been issued. It would not appear that the activities of Alchem, Ltd., would qualify for the exclusion.

N.D.C.C. § 60-02-07 states "[a] license must be obtained . . . for each public warehouse . . ." If Alchem stores, buys, sells, or ships grain for compensation, then it must be licensed.

It appears that the statute is ambiguous on the question of whether processors must be licensed. The first sentence in N.D.C.C. § 60-02-01(5) does not speak of manufacturers or

manufacturing. The second sentence, however, refers to a "warehouseman [person operating a public warehouse] doing manufacturing business only" (emphasis added). This proviso recognizes that a licensed warehouse might do only manufacturing or processing and prohibits producers from forcing such a processor to also store grain. It strongly suggests that the Legislature meant to include processors who store, buy, sell, or ship grain within the definition of warehouseman.

The definition of public warehouse [N.D.C.C. § 60-02-01(5)] does not include a facility which processes grain if the facility does not also store, buy, sell, or ship grain for compensation. Whether or not the activities of any particular facility constitute storing, buying, selling, or shipping for compensation is a question of fact to be determined, at the regulatory level, by the Public Service Commission. It is apparent, however, based on the language of N.D.C.C. § 60-02-01(5), that the Legislature intended that facilities which buy grain for processing be licensed and bonded.

Sincerely,

Nicholas J. Spaeth

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