

PUBLIC WAREHOUSES:
LICENSES:

The Douglas-Guardian Warehouse Corporation, a corporation, is conducting and operating a public warehouse in the City of Springfield, Greene County, Missouri, as defined in Section 415.010, RSMo 1949, and is required to comply with all of the terms of Chapter 415, RSMo 1949, relating to warehouses in this State.

February 20, 1953

Honorable Douglas W. Greene
Prosecuting Attorney
Greene County
Springfield, Missouri



Dear Mr. Greene:

This will be the opinion requested by Honorable Milton B. Kirby, your predecessor in office, for our construction of the public warehousing statutes of this State to determine whether the Douglas-Guardian Warehouse Corporation, a Louisiana corporation, and other warehouse corporations of like status, which are doing a public warehouse business in this State, are required to procure the license prescribed by our statutes. The letter requesting an opinion reads as follows:

"Enclosed find copy of a letter addressed to me by Mr. Warren Turner of the firm of Turner, Davidson and Potter, a copy of an opinion written by a former Assistant Attorney General, and a warehousing contract of the Douglas-Guardian Warehouse Corporation.

"Mr. Turner is anxious to find out whether or not the same ruling that covers the opinion of your department on March 19, 1940 in regard to the Lawrence Warehouse Company should apply to Douglas-Guardian Warehouse Corporation. It is my opinion that the earlier opinion might bear inspection, and if perhaps under the existing law that both Douglas-Guardian Warehouse Corporation and Lawrence Warehouse Company might not both be subject to the license fee."

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With said letter there were transmitted copies of the "Sub-Lease-Lease" and "Warehousing Contract" used by the Douglas-Guardian Warehouse Corporation in leasing buildings and premises wherein its business of warehousing is carried on and the agreed method of procedure provided in such contract whereby such business is conducted in this State, respectively.

Reference is made in the letter requesting this opinion to an opinion on this same subject issued by this office dated March 19, 1940, directed to Honorable Maurice L. Hushlin, Associate Prosecuting Attorney, Municipal Courts Building, St. Louis, Missouri. The said opinion of March 19, 1940, is not sufficiently definite in the entirety of its conclusion as to the necessary compliance with all of the terms of Chapter 415, RSMo 1949, formerly Chapter 137, Article 1, R. S. Mo. 1939, by public warehouses before being permitted to carry on their business in this State. The said opinion of March 19, 1940, is, therefore, hereby withdrawn.

Section 415.010, RSMo 1949, defining public warehouses, reads as follows:

"All warehouses or storehouses situated in cities or towns now having or which shall hereafter have over twenty-five thousand inhabitants, and wherein other property than grain is stored for a compensation or consideration, are declared to be public warehouses."

Section 415.020 of said Chapter requiring the licensing and the annual renewal of such license by the proprietor, lessee or manager of any public warehouse provided for in said Chapter 415, reads as follows:

"The proprietor, lessee or manager of any public warehouse provided for by this chapter shall be required, before transacting any business in such warehouse, to procure from the circuit court of the county in which said warehouse is situated (or if to procure license for a public warehouse in the city of St. Louis, application shall be made to the circuit court of said city) a

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license permitting such proprietor, lessee or manager to transact business as a public warehouseman under the laws of this state, which license shall expire with December thirty-first next following issuance thereof, and which shall be otherwise renewed annually as provided under the laws of this state, which license shall be issued by the clerk of said court upon written application, which shall set forth the location and the name of such warehouse, and the individual name of each person interested as owner or principal in the management of same, or if the warehouse be owned or managed by a corporation, the names of the president, secretary and treasurer of such corporation shall be stated; and the said license shall give authority to carry on and conduct the business of a public warehouse, other than a warehouse for the storage of grain, for any calendar year or portion thereof, and shall be renewed annually thereafter in accordance with the laws of this state, and shall be revocable by said court upon a summary proceeding before the court, upon the complaint of any person, in writing, setting forth the particular violation of the law, to be sustained by the satisfactory proof, to be taken in such manner as may be directed by the court."

Other sections of said Chapter 415, which we deem it unnecessary to quote here, do require full compliance with the provisions of said Chapter and prohibit the transacting of warehousing business in cities in this State now having, or which shall thereafter have, a population of 25,000 inhabitants or more until such compliance shall be accomplished.

We have carefully examined and studied the terms and provisions recited in the copies of both the "Sub-Lease-Lease" and the "Warehousing Contract" submitted to us to determine if the Douglas-Guardian Warehouse Corporation

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intends to conduct, and in fact is conducting, under the terms and requirements of such Sub-Lease-Lease and Warehousing Contract, a public warehouse in the State of Missouri as defined in said Section 415.010, supra, and as regulated by the remaining sections of Chapter 415.

We believe the terms and provisions of the Sub-Lease-Lease and the Warehousing Contract, said to be used by the said Douglas-Guardian Warehouse Corporation clearly show that said corporation, if operating a warehouse, or warehouses, in this State, under such lease and contract, would be, and is, conducting a public warehouse, or warehouses, in this State and is subject to all of the provisions of said Chapter 415 respecting the procuring of a license to transact a warehousing business under said Section 415.020, supra. A careful reading of said Sub-Lease-Lease and Warehousing Contract forms reveals numerous provisions and requirements to be observed by the parties to the lease and contract which if carried out would conclusively, we believe, constitute the business carried on under such provisions of such lease and contract public warehousing in this State. Among such provisions we find in paragraph 2 of the first clause on the front page of said lease the following provision:

"* * * said lessee to have the sole dominion and control of the premises so leased as a public warehouseman, and to be entitled as such public warehouseman at all times to receive and store merchandise and goods in or upon said leased property, and issue warehouse receipts therefor. It is expressly understood and agreed between lessor and lessee that the lessor shall not have access to the premises herein demised or any part thereof, except with the permission of the lessee in writing, and that lessor shall not attempt to exercise at any time any control of any sort over any of the goods delivered to lessee for storage during the existence of this lease."

There appear in the first and fourth clauses on the front page of the "Warehousing Contract" the following covenants and agreements:

"That Warehouseman will maintain a branch public warehouse on the premises, as covered in said lease, or leases, and issue

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its warehouse receipts on commodities
accepted for storage therein;

* * * * *

"* * * Storer shall further reimburse
Warehouseman for the cost of all bonds,
recording expense, State license fee,
cost of constructing and maintaining
enclosures, placing signs, etc.; * * *"

The carrying out of such conditions and obligations and other similar obligations, rights and privileges by the "lessee" as are provided in said lease and contract are the elements of and constitute a warehousing business when and if performed by any person, firm, partnership, association or corporation, and any such person or other entities named who carry on such business, including the storing of goods in a building on premises in the exclusive possession and control of the operator of such business, the charging of compensation therefor, and the issuing of warehouse receipts by the operator of such business in the State of Missouri, is subject, as a warehouseman, to the strict observance of all the obligations imposed upon the business of warehousing, including the procurement of the license to do business in this State, as required by the terms of the statutes of this State.

In reaching our conclusion on this question we do not believe it is needful to go farther than to understand the plan adopted and practiced by the said corporation in carrying on its warehousing business as expressed in its said lease and contract to determine that said corporation is doing a public warehousing business in this State and thereby becomes and is subject to our State warehousing statutes.

Considering the terms and conditions of the Sub-Lease-Lease and Warehousing Contract submitted to us for consideration, and used by said corporation and applying thereto the provisions of our statutes relating to warehouses, we are convinced that such business is public warehousing, and requires full compliance by the Douglas-Guardian Warehouse Corporation with all of the terms of said Chapter 415, RSMo 1949.

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CONCLUSION.

It is, therefore, considering the premises, the opinion of this office that:

1) Every person, firm, partnership, association or corporation situated in cities or towns now having, or which shall hereafter have, over 25,000 inhabitants, and wherein property other than grain is stored for a compensation or consideration, is carrying on a warehousing business in this State and is required to comply with all of the provisions of the several sections of Chapter 415, RSMo 1949, relating to warehouses;

2) That the Douglas-Guardian Warehouse Corporation, a corporation, is carrying on a warehousing business in the City of Springfield, Greene County, Missouri, as defined in Section 415.010, RSMo 1949, and is required to comply with all of the terms of Chapter 415, RSMo 1949, relating to warehouses.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. George W. Crowley.

Yours very truly,

JOHN M. DALTON
Attorney General

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