

**SECURITIES COMMISSION. WHISKEY WAREHOUSE RECEIPTS** held to be a security. **SECURITIES**—whiskey warehouse receipts held to be securities. **REGISTRATION**—whiskey warehouse receipts must be registered under the Securities Law before being sold in this State. **DEALER**—persons selling whiskey warehouse receipts must be registered as securities dealer.

January 7, 1937.

Mr. Chester Montgomery,  
Securities Commissioner,  
Indianapolis, Indiana.

Dear Sir:

In your letter of October 8, 1936, you stated in your first question that you desire to know whether bonded warehouse receipts covering whiskey in storage are "securities" as defined by the Securities Law of Indiana, and whether or not the sale of such receipts are regulated by such law. I note that the attached warehouse receipt form contains a description of the particular barrel or barrels of bonded whiskey for which it is issued. The body of the instrument recites a sale of barrel or barrels and places upon the purchaser the duty of paying storage thereon until demand is made for the barrel or barrels, together with accrued taxes thereon.

The term "warehouse receipt" is defined in 67 C. J. page 463, subject, "Warehouseman and Safe Depositories," Sec. 31, as follows:

"A warehouse receipt is a written acknowledgment by a warehouseman that he holds certain goods in store for the person to whom the writing is issued, the essential thing being the acknowledgment by the warehouseman that the goods are in his warehouse or store. It has also been defined as a simple written contract between the owner of the goods and the warehouseman, the latter to store the goods and the former to pay the compensation for that service."

In 67 C. J. page 467, it is stated that:

"A warehouse receipt must conform substantially with the statutory requirements, such as those of the Uniform Warehouse Receipts Act, and corresponding

adopting statutes, in regard to matters to be embodied in the terms of the receipt, such as a statement as to the location of the warehouse, the consecutive number of the receipt, whether the goods will be delivered to the bearer, to a specified person, or to a specified person or his order, the rate of the storage charges and, if the receipt is issued for goods of which the warehouseman is owner, a statement of the fact of his ownership."

The term "securities" is defined in our Indiana statutes, chapter 31, Acts 1925, as amended by chapter 165, Acts of 1931, as amended by chapter 179, Acts of 1935. Sec. 3 of said Act reads in part as follows:

"When used in this Act the following terms shall unless the text otherwise indicates, have the following respective meaning:

1. "Securities" shall include any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation, or right to subscribe to any of the foregoing, certificate of interest in a profit sharing agreement, income contracts, annuity contracts unless issued by an insurance company qualified with the Insurance Department of this State, subscriptions and contracts covering or pertaining to the sale or purchase of securities on the installment plan, any form of contract or agreement for the sale and conveyance of land or interest therein lying outside of this State, on deferred payments or installment plan, certificates of interest in an oil, gas, or mining lease, royalty or title, collateral trust certificate, pre-organization certificate, pre-organization subscription, beneficial interest in a trust or pretended trust, *any transferable certificate evidencing interest in or right to specific property*, any transferable share, investment contract, or beneficial interest in title to property, profits or earnings, or any other instrument commonly known as a security; including an interim or temporary bond, debenture, note, certificate or lease for a security or for subscription to a security." (Our italics.)

The delivery of a warehouse receipt carries the title and constructive possession of the property to the purchaser of such receipt. It is "a transferable certificate evidencing interest in or right to specific property."

And, therefore, it is my opinion that whiskey warehouse receipts are securities within the provisions of section 3 of chapter 179, Acts of 1935, of the State of Indiana.

Your second question reads as follows:

"Is the sale of such a receipt in Indiana contrary to the provisions of the laws of this State controlling the sale of alcoholic beverages, or to the statutes of the State?"

The alcoholic beverages act, chapter 226 of the Acts of 1935, Sec. 32, sub-section (m) provides that:

"No person shall deal in, transfer, buy or sell warehouse certificates *as defined in this act* contrary to the provisions of this Act." (Our italics.)

The foregoing provision is the only specific reference to warehouse receipts to be found in the Act in question, and if the legislature intended to cover the regulation of warehouse receipts more specifically in said Act, it neglected to do so. Consequently, we must look to the other and general provisions of the Act to ascertain the effect of the same upon the question of warehouse receipts. All of the other provisions of the Act appear to be designed to regulate the alcoholic beverages themselves and the physical custody and control thereof, rather than to regulate the mere change of ownership or title to beverages which is unaccompanied by change of actual custody or possession, such as is the case generally in transactions involving warehouse receipts. In this connection I would call your attention particularly to sections 31 (5), 32 (a), 32 (c), 32 (v), and 41 of chapter 226 of the Acts of 1935.

Under the revenue laws of the United States, distillers are allowed to place whiskey for storage either in a so-called distillery warehouse (R. S. 3271) or any public warehouse bonded by the United States Government and known as a general bonded warehouse (26 U. S. C. A. Sec. 1265). These warehouses are used for the storage of whiskey upon which

the federal excise tax has not been paid by the distiller. Buildings or storage places used either as distillery warehouses or general bonded warehouses are privately owned, but by law are placed in charge of agents or employees of the federal government, who, together with the owners of the warehouses, have joint custody and control of the whiskey in storage. See *Taney v. Penn. Nat. Bank*, 187 Fed. 689 and pages 697 and 698 and 699.

Whiskey stored in such warehouses can be withdrawn by the owner thereof upon the payment of the tax to the federal government and in compliance with the other Acts of Congress and the regulations of the Treasury Department and State laws and regulations in respect to the withdrawal of whiskey from distilleries or bonded warehouses. The storage or deposit of whiskey in distillery or general bonded warehouses does not pass title to the spirits to the government, although the spirits are virtually in the control and possession of the government for the payment of excise taxes levied by law upon distilled spirits which taxes generally are not paid until the whiskey is withdrawn from such warehouse. Although the owner of distilled spirits in a bonded warehouse does not have the outright physical custody of the whiskey stored, nevertheless that fact does not deprive the owner of his title to the liquor and he is free to sell, transfer, or pledge such goods as he may see fit subject to the lien of the government for the taxes on the spirits. In other words, title to liquor in a bonded warehouse is at least constructively in the owner subject to the lien of the government for taxes. In the case of *Patterson v. Dale, et al.*, 196 Fed. 5, it was held in the first paragraph of the syllabus that:

“Where distilled liquor is stored in a distillery warehouse under control of the collector of the district and in charge of the Internal Revenue storekeeper, as provided by United States Compiled Statutes 1901, pp. 2122-2124, Sec. 3271-3274 et. seq.;, providing for a joint custody of the warehouse by the distiller, and the storekeeper, the distiller’s surrender of control does not divest his title nor prevent his dealing with the property subject to the paramount rights of the government.”

Title to whiskey in a bonded warehouse is generally evidenced by warehouse receipts which are issued by the warehouseman. I am informed that warehouse receipts issued for whiskey in bonded warehouses generally give a description of the whiskey, serial number of the barrel or casks, number of proof gallons in the barrel or cask, and all receipts of whiskey in this warehouse, quantity and type of whiskey, ownership of the spirits, place of storage, rate of storage and other charges, whether insurance is paid, and that a certain and definite number of barrels or casks will be delivered to bearer, specified person or his order upon presentation of the receipt. Thus a warehouse receipt for whiskey issued either by a distillery warehouse or a general bonded warehouse is a written acknowledgment by the warehouseman that he holds certain specific spirits in storage for the person to whom the receipt is issued and it is also written evidence of the ownership of the holder of the receipt of the property covered by the warehouse receipt; in short, a warehouse receipt for distilled spirits is documentary evidence of title to whiskey which is under government control and custody for taxation purposes.

According to ordinary usage the transfer or negotiation of such receipt is sufficient to transfer the title to the property in storage and gives constructive possession of the owner thereof subject to the lien of the government thereon. (*Gordon v. Freeman*, 112 Minn. 482; *Taney v. Penn. Nat. Bank*, *supra*, 700; *Hunt v. Bode*, 66 Ohio State 255, at 269).

On the transfer of a warehouse receipt for whiskey, the title to the spirits covered in the receipt passes and the warehouseman will deliver the whiskey covered by the receipt, provided the holder complies with the laws of Congress and State laws and regulations pertaining to the withdrawal of whiskey in bonded warehouses and is entitled to withdraw such spirits. In other words, title and constructive possession passes on the transfer, pledge or negotiation of a warehouse receipt, even though the spirits covered in the receipt are subject to the lien of the government for taxes and subject to the owner thereof complying with State laws and regulations before actually obtaining physical possession of said spirits. The whiskey is subject to the lien of the warehouseman for storage, and the custody thereof is subject to the restraint and control of the federal government and the

laws and regulations of the State wherein such spirits are stored or into which they are imported.

The warehouse receipt submitted has the following provision:

“This receipt is issued on condition that the delivery of said whiskey shall be made only as authorized by law and by such regulations, whether made pursuant to federal or state authority, as may be issued with respect thereto.”

It is my opinion that the sections of chapter 226, Acts of 1935, quoted above, and other pertinent provisions of the Act affecting the purchase and sale of whiskey, only have reference to the purchase and sale thereof where the physical possession of the whiskey is transferred, or contemplated to be transferred in connection with said purchase, and would not apply to the sale of warehouse receipts only, where the purchasers of said receipts would only receive a constructive possession of whiskey under said receipts. The whiskey still would be subject to the lien of the government for taxes, however, and the lien of the warehouseman for storage, and subject to the restraint and control of federal and state laws and regulations affecting physical possession of the whiskey covered by said warehouse receipts. In other words, while it is true that the mere sale or purchase of warehouse receipts for liquor, where there is no change of physical possession, probably should not be considered as a sale or purchase of alcoholic beverages within the meaning and intent of chapter 226, *supra*; nevertheless, when transfer of the physical possession of the liquor is eventually made either in conjunction with or subsequent to the sale of the warehouse receipt, the ultimate purchaser to whom delivery of the whiskey is to be made in this State or who seeks to import the same into this State, must be authorized by the terms of chapter 226, *supra*, so to do.

To summarize the answer to this second question, it is my opinion that sales may be made between unlicensed individuals of warehouse receipts for such liquor so long as there is no change in the physical possession of the liquor and the receipts are sold subject to federal, state and local regulations in connection with the physical possession and withdrawal of such liquor, and provided that such whiskey ware-

house receipts are duly registered with the Indiana Securities Commission as required by law; but that when finally a sale is made which is accompanied or to be accompanied by a change of the physical possession or withdrawal within this State, or importation into this State, of said liquor, the purchaser must be authorized to receive or import the same under the provisions of the Alcoholic Beverages Act of 1935, heretofore referred to.

Your third question reads as follows:

“The commission also desires to know whether your conclusions in relation to the preceding questions will apply with equal force to receipts offered in Indiana covering whiskey stored in warehouses in this State.”

It is my opinion that the conclusions reached in answer to the questions numbered one and two apply with equal force to whiskey warehouse receipts irrespective of whether the whiskey is stored in this State or some other state.

---

**WEIGHTS AND MEASURES, BUREAU OF: County inspector of weights and measures, removal by county commissioners with approval of State Commission—whether charges must be preferred.**

January 11, 1937.

Hon. Martin L. Lang, Commissioner,  
Bureau of Weights and Measures,  
Indiana State Board of Health,  
State House Annex,  
Indianapolis, Indiana.

Dear Mr. Lang:

I have at hand your inquiry of January 9th, submitting two questions, as follows:

1. Can a Board of County Commissioners remove a county inspector of weights and measures when the records of the Board show the incumbent was appointed for a four year period on January 3, 1933?
2. Is it necessary to give an examination and press charges of inefficiency, or can the removal be made by