

**OPINION  
51-126**

May 29, 1951 (OPINION)

OPS

RE: Conflict of State and Federal Laws

House Bill 613, passed by the 1951 legislative assembly, provides for an increase in charges allowed on a warehouse and storage contract.

Prior to the passage of this measure, grain was insured and stored subject to the charges provided in section 60-0217, NDRC, 1943, as follows:

- a. One-thirty-sixth of one cent net bushel per day, provided, however, that no storage shall be charged for grain so stored for 15 days from date of delivery.
- b. Payment or tender of a delivery charge per gross bushel of three cents on flax, two cents on wheat or rye, and two cents on other grains.

House Bill 613, which will take effect July 1, 1951, will increase charges to:

- a. One-thirtieth of one cent net bushel per day.
- b. Four cents on flax, three and one-half cents on wheat or rye, and two cents on other grains.

On January 26, 1951, the director of price stabilization issued a general ceiling price regulation. This was supplemented by ceiling price regulation 34 issued on May 11, 1951, and effective May 16, 1951.

Regulation 34, in general, establishes the ceiling price on most services at the levels prevailing in the period of December 19, 1950 to January 25, 1951, inclusive.

Under the existing section 60-0217, NDRC, 1943, the charges on warehouse and storage contracts were established at a specified rate which was in effect from December, 1950, to January 25, 1951, inclusive.

Assuming that ceiling price regulation 34 applies to the charges allowed under section 60-0217 and House Bill 613, the question presented for determination is: Does ceiling price regulation 34 have the effect of freezing the service charges allowed under section 60-0217, NDRC, 1943, and thus make inoperative its proposed amendment, that is, House Bill 613?

Generally, when the constitutional powers of federal government and those of the state come in conflict the latter must yield. A valid act of Congress is controlling in case of conflict between it and a

state statute, as shown in Corpus Juris, State, section 8 and 59 C.J., page 34, note 46, page 36, note 50.

Authorized federal regulations and state laws are in conflict if when one obeys the state law he incurs the penalty of the federal law, or if he obeys the federal law he incurs the penalty of the state law.

Under North Dakota House Bill 613, if the charge was allowed at the increased rate of the state law the penalty of the federal law would, of course, apply.

It is, therefore, our opinion that ceiling price regulation 34, which was issued pursuant to the defense production act of 1950, public law 774, eighty-first Congress, executive order 10161, and economic stabilization agency, general order no. 2, is controlling in case of a conflict with the proposed state law, and that House Bill 613 will be rendered inoperative.

However, state statutes which are merely rendered inoperative by an act of, or by want of permission by, Congress may become operative without reenactment when the inhibition is removed or permission is given.

Section 22 of regulation 34 provides for the filing of a petition for amendment of said ceiling price regulation.

It is recommended that such petition for amendment be filed with the hope that the ceiling price regulation may be amended to take cognizance of our recent legislative action which recognized the need for increased charges on warehouse and storage contracts.

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