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OFFICE OF THE ATTORNEY GENERAL  
Official Opinion No. 2018-10

October 30, 2018

**OFFICIAL OPINION 2018-10**

Mr. Jeffrey Cummins, Interim Director  
Indiana Grain Buyers and Warehouse Licensing Agency  
Indiana State Department of Agriculture  
1 North Capitol Avenue, Suite 600  
Indianapolis, IN 46204

**RE: Indiana Grain Indemnity Fund Collection Process**

Dear Mr. Cummins:

The former director of the Indiana Grain Buyers and Warehouse Licensing Agency posed several questions to the Office of the Attorney General (OAG) pursuant to Ind. Code § 4-6-2-5. The following is the official response to these inquiries.

**QUESTIONS PRESENTED**

1. At what point in the transaction for the sale of marketed grain are first purchaser licensees required to collect the producer premiums designated for the Indiana Grain Indemnity Fund?
2. What collection process may the Board of the Indiana Grain Indemnity Corporation and Indiana Grain Buyers and Warehouse Licensing Agency use to collect producer premiums for the Indiana Grain Indemnity Fund?

**BRIEF ANSWERS**

1. Ind. Code § 26-4-4-6(a)(1) requires the producer premium to be collected by a first purchaser licensee (*i.e.*, the grain buyer) when the licensee makes actual payment to the producer for the purchased grain. While Ind. Code § 26-4-4-4(a) describes the exact commodity (*i.e.*, the good) subject to the producer premium, who is to be charged, and the method of calculating the premium, Ind. Code § 26-4-4-6(a)(1) plainly states that the premium shall be *deducted from the producer's payment*. The timing of collection is tethered by the statutory language of Ind. Code § 26-4-4-6(a)(1) only to the producer's payment, notwithstanding that sale, delivery, or price establishment may occur on the same or a different date as payment through various contractual arrangements used within the grain industry.

2. The Board of the Indiana Grain Indemnity Corporation ("IGIC") and the Indiana Grain Buyers and Warehouse Licensing Agency ("IGBWL") are without discretion to deviate from the statutorily prescribed Indiana Grain Indemnity Fund ("Fund") collection process in Ind. Code Chapter 26-4-4. Ind. Code §§ 26-4-4-8 and 26-4-4-9 required grain buyers to collect producer premiums for the Fund beginning on July 1, 2015, until the Fund contained more than 25 million dollars as of June 30 of any given year. Grain buyers were therefore required to cease premium deductions from producer payments as of June 30, 2017, in compliance with Ind. Code §§ 26-4-4-8 and 26-4-4-9.

The date of actual payment for the grain, and whether it was made during the July 1, 2015 through June 30, 2017 collection period, determines whether a producer premium was to be charged and submitted to the Fund. The premiums deducted during the July 1, 2015 through July 30, 2017 collection period were to be submitted to the IGBWL on the payment schedule set in Ind. Code § 26-4-4-6(b).

**BACKGROUND**

The Fund was initially established in 1995 to provide Indiana grain farmers protection from catastrophic losses resulting from the failure of a state-licensed grain buyer, warehouse, or grain bank.<sup>1</sup> The Fund is administered by the IGIC Board of Directors, while the IGBWL assists with the implementation of the Fund on the IGIC Board's behalf.<sup>2</sup> Practically, premium collections for the Fund directly affect at least 241 licensees in Indiana, comprising over 500 individual facilities, as well as thousands of grain producers throughout Indiana. The questions presented arise under statutes and regulations concerning the timing of the collection of the premiums

## ANALYSIS

### ***The Indiana Grain Indemnity Fund***

The Fund provides money to pay grain producers for losses incurred as a result of the failure of a grain buyer or warehouse operator licensed under Ind. Code § 26-3-7.<sup>3</sup> To finance the Fund, Ind. Code § 26-4-4-4(a) requires producers of grain to be charged a producer premium equal to two-tenths percent (0.2%) of the price on all marketed grain that is "sold" to a grain buyer.<sup>4</sup> The Fund consists of these producer premiums collected under Ind. Code Chapter 26-4-4 and operates on a fiscal year basis from July 1 to June 30.<sup>5</sup> In accordance with Ind. Code §§ 26-4-4-8 and 26-4-4-9, the most recent collection period implemented by the IGWBLA [*sic*, *IGBWL*A] began on July 1, 2015, and ended on June 30, 2017.

### ***The Collection of Producer Premiums by Grain Buyers***

The primary goal of statutory construction is to determine, give effect to, and implement the intent of the Legislature.<sup>6</sup> It is presumed "that the Legislature intended for the statutory language to be applied in a logical manner consistent with the statute's underlying policy and goals."<sup>7</sup> The primary resource for determining the intent of the Legislature is the language used in the statute.<sup>8</sup>

If possible, all statutes should be construed together so as to harmonize and give effect to each.<sup>9</sup> "Where there are two statutes on the same subject, they should be construed together so as to harmonize and give effect to each, if possible, because they are *in pari materia*."<sup>10</sup> "Where one statute deals with a subject in general terms and another statute deals with a part of the same subject in a more detailed or specific manner, then the two should be harmonized, if possible; but if they are in irreconcilable conflict then the more detailed will prevail as to the subject matter it covers."<sup>11</sup>

The collection of producer premiums for the Fund is the subject matter of both Ind. Code § 26-4-4-4(a) and Ind. Code § 26-4-4-6(a)(1). Upon review of the language of both statutes, we conclude that they can be construed together so as to harmonize and give effect to each.

We conclude that the language in Ind. Code § 26-4-4-4(a) establishes, unambiguously, three things: (1) the product that is subject to the producer premium (*i.e.*, marketed grain "sold" to a grain buyer, not merely stored);<sup>12</sup> (2) who is to be charged the producer premium; and (3) the method of calculation of the producer premium. This statutory language does not explicitly time the collection "upon sale" or at any other designated point; however, Ind. Code § 26-4-4-6(a)(1) addresses timing with more specificity.

While Ind. Code § 26-4-4-4(a) describes the subject of the premium, who is to be charged, and the method of its calculation, Ind. Code § 26-4-4-6(a)(1) clearly states that the premium shall be *deducted from the producer's payment* (emphasis added).

Ind. Code § 26-4-4-6(a) reads as follows:

- (a) When purchasing grain, a grain buyer, a grain buyer's agent, or a grain buyer's representative shall:
- (1) deduct the producer premium described in [Ind. Code § 26-4-4-4] from the producer's payment; and
  - (2) document the producer premium paid by the purchaser.

The deduction of the payment is not tethered in any manner by the language in Ind. Code § 26-4-4-4(a) or Ind. Code § 26-4-4-6(a)(1) to the date of sale, delivery, or price establishment; rather, the deduction is to occur only upon the producer's payment.

Further, after construing Ind. Code § 26-4-4-4(a) and Ind. Code § 26-4-4-6(a)(1) together, it is reasonable to conclude that a price must be fixed and payment actually made before a buyer can deduct the premium payable to the Fund. There is no presumption that the Legislature intended Ind. Code 26-4-4-6(a)(1) to be applied illogically or to bring about an unjust or absurd result. Alternative payment arrangements, such as "credit-sale contracts", are commonplace within the grain industry, allowing for grain prices to be fixed or payment deferred until after the date the grain is sold. It would simply be impracticable to calculate or collect the producer's premium at the point of sale based upon two-tenths percent (0.2%) of the purchase price<sup>13</sup> when the grain remains unpriced or payment is not made until a later date.

We will next consider a more detailed analysis of the alternate structures for conducting grain sale transactions so we may discern legislative intent and the reasonableness of the IGIC Board's and IGBWLA's collection process.

### **Types of Contracts for Marketed Grain**

Various types of contracts used to market grain are described by statute or exist as part of a common course of conduct between producers and buyers. Two contract types are described in Ind. Code § 26-3-7-2(9) ("delayed payment") and Ind. Code § 26-4-1-8 ("deferred pricing"). Either type may cover producer premiums dedicated to the Fund. Spot sale, cash sale, basis, forward, hedge-to-arrive, offer, and minimum price contracts may also be utilized, depending upon the business interests of the parties.

As specified in Ind. Code § 26-3-7-2(9), a "delayed payment" is a purchase by a buyer when title to the grain passes to the buyer at a determined price and payment to the seller is not made in less than twenty-one (21) days after delivery.<sup>14</sup> A "deferred pricing" or "price later" contract is described in Ind. Code § 26-4-1-8 as a purchase by a buyer where title to the grain passes to the buyer and the actual dollar price to be paid to the seller is not to be determined at the time the grain is received by the buyer or less than twenty-one (21) days of receipt.<sup>15</sup> Both deferred payment and deferred pricing contracts are also known as "credit-sale contracts" because they create an arrangement between the parties in which the seller becomes an unsecured creditor of the grain buyer.<sup>16</sup> Under either arrangement, title to the grain passes to the buyer upon delivery, before the price is fixed or the payment is made.<sup>17</sup> Grain transferred under either arrangement or other types of credit-sale contracts may be considered "sold" upon delivery, notwithstanding that the grain is priced or paid for at a later date.<sup>18</sup>

Further, the minimum contract requirements for grain buyers and buyer-warehouse licensees are outlined in [824 IAC 2-13-1](#). Such contracts for the purchase of grain must contain, at a minimum, the terms listed in [824 IAC 2-13-1\(b\)\(1\)-\(15\)](#), including the method of pricing, dates of the delivery of the grain to be covered by the contract, and the date payment is to be made. [824 IAC 2-13-1\(b\)](#) clearly illustrates separateness of terms and accommodates deferred payment, deferred pricing, and other permissible alternative payment arrangements with term variations.

Considering the nature of contracts and business practices between grain producers and buyers, and a preference for the efficient administration of the Fund, it is rational to conclude that the Legislature intended to create a consistent, fixed point at which the producer premium is collected for all subject grain sale transactions (*i.e.*, the point actual payment is made by the grain buyer to the producer).<sup>19</sup> A standardized method of collection at the time of actual payment facilitates efficiencies for documenting, paying, and inspecting<sup>20</sup> premium collections for both the licensees and IGBWLA [*sic*, IGBWLA], and comports with the language of both Ind. Code §§ 26-4-4-4 and Ind. Code 26-4-4-6(a)(1).

### **The IGIC Board's and IGBWLA's Method of Collecting Producer Premiums**

The IGIC Board has the authority under Ind. Code § 26-4-3-7(1) to adopt rules, create forms, and establish guidelines to implement Ind. Code Article 26-4, including the Fund established under Ind. Code Chapter 26-4-4. "We pay due deference to the interpretation of a statute by the administrative agency charged with its enforcement in light of its expertise in its given area."<sup>21</sup> "When a statute is subject to different interpretations, the interpretation of the statute by the administrative agency charged with the duty of enforcing the statute is entitled to great weight, unless that interpretation is inconsistent with the statute itself."<sup>22</sup>

As concluded, *supra*, the language of Ind. Code § 26-4-4-6(a)(1) requires the producer's premium to be deducted from the buyer's actual payment to the producer. The IGIC Board's and IGBWLA's current collection practices are, based upon the facts presented to the OAG, to have been implemented in accordance with this interpretation. The producer premiums were collected only for payments that were *actually made* within the statutorily authorized collection period, notwithstanding that the date of sale, physical delivery, or price establishment of the grain fell outside of this collection period.

Ind. Code § 26-4-4-5 requires the IGBWLA to notify licensed purchasers that producer premiums must be deducted from the purchase price of the grain on and after the date specified in the notice, which is the start date for the collection period set by Indiana Code §§ 26-4-4-8 and 26-4-4-9. Premiums for the July 1, 2015 through July 30, 2017 collection period were to be submitted to IGBWLA on behalf of the IGIC Board on the payment schedule established in Ind. Code § 26-4-4-6(b), which coincides with the fiscal year from June 1 to July 30 on which the Fund operates.<sup>23</sup> For example, premiums collected during April, May, and June of 2017 were required to be submitted to IGBWLA no later than July 31, 2017.<sup>24</sup>

Producer premiums must be collected by grain buyers until the Fund contains more than 25 million dollars as of any given year.<sup>25</sup> With one statutory exception not relevant to this opinion, the Board of the IGIC may not require the collection of additional producer premiums until the amount in the fund drops below 20 million dollars, as determined under Ind. Code § 26-4-4-9. In accordance with Ind. Code §§ 26-4-4-8 and 26-4-4-9, the IGBWLA notified licensees by letter in April 2017 that they should cease collections of producer premiums as of June 30, 2017. A second letter was issued by IGBWLA to licensees on June 9, 2017, advising that collections would cease at 11:59 p.m. on June 30, 2017, and that any payments for grain made thereafter should not have the producer premium deducted.

The IGBWLA may not deviate from the statutory requirements for collecting producer premiums prescribed in Ind. Code Chapter 26-4-4. Since the Fund exceeded 25 million dollars as of June 30, 2017, collections were properly ceased on that date.<sup>26</sup> At that time, the agency was without discretion to collect premiums on any grain for which payment had not actually been made, even if a sale, delivery, or established price occurred during the collection period but actual payment did not. This may very well be the circumstance under credit-sale or other contracts discussed *supra*. The payment date is determinative. Producer premiums were to be submitted to IGBWLA on the payment schedule set forth in Ind. Code § 26-4-4-6(b).

### CONCLUSION

The plain language of Ind. Code § 26-4-4-6(a)(1) requires producer premiums to be collected by first purchaser licensees at the time the licensee actually makes payment to the producer for the purchased grain. Ind. Code §§ 26-4-4-8 and 26-4-4-9 establish the date and time frames for the collection period. A standardized method of collection that is dependent only upon the actual payment date, and whether the payment was actually made within the statutorily authorized collection period, facilitates practical efficiencies that the Legislature intended when it enacted the statutory scheme in Ind. Code Chapter 26-4-4 to implement the Fund. For the reasons discussed herein, we conclude that only premiums deducted from producer payments actually made between July 1, 2015 and June 30, 2017 must be submitted to the IGBWLA on behalf of the IGIC Board.

SUBMITTED, and  
ENDORSED FOR PUBLICATION:

Curtis T. Hill, Jr.  
Attorney General

Scott C. Newman, Chief Counsel  
Kevin C. McDowell, Assistant Chief Counsel  
Christine Monte, Deputy Attorney General

<sup>1</sup> Act of May 1, 1995, § 1, P.L. 250-1995 (codified as amended at Ind. Code § 26-4-4-1 (2018)).

<sup>2</sup> Ind. Code § 26-4-4-1(a).

<sup>3</sup> *Id.*

<sup>4</sup> The term "grain buyer" is defined in Ind. Code § 26-4-1-14 as "a person licensed under [IC 26-3-7](#) who is engaged in Indiana in the business of buying grain from producers."

<sup>5</sup> Ind. Code § 26-4-4-1(c).

<sup>6</sup> *City of Carmel v. Steele*, 865 N.E.2d 612, 618 (Ind. 2007) (citing *Ind. Civil Rights Comm'n v. Alder*, 714 N.E. 2d 632, 637 (Ind. 1999)).

<sup>7</sup> *State v. Oddi-Smith*, 878 N.E.2d 1245, 1248 (Ind. 2008).

<sup>8</sup> *Porter Dev., L.L.C. v. First Nat'l Bank of Valparaiso*, 866 N.E.2d 775, 778 (Ind. 2007).

<sup>9</sup> *New York Cent. R.R. Co. v. Pub. Serv. Comm'n of Ind.*, 147 N.E.2d 547, 549 (Ind. 1958).

<sup>10</sup> *Schrenker v. Clifford*, 387 N.E.2d 59, 60 (Ind. 1979).

<sup>11</sup> *Indiana Alcoholic Beverage Comm'n v. Osco Drug, Inc.*, 431 N.E.2d 823, 833 (Ind. Ct. App. 1982).

<sup>12</sup> It is not necessary to define the term "sold" in Ind. Code § 26-4-4-4(a). The analysis in this opinion is focused on the timing of the deduction of producer premiums from actual payments to producers, not on the determination of when grain is considered "sold" under the sales provisions of the Indiana Uniform Commercial Code (UCC), Ind. Code Chapter 26-1-2. See *Sebasto v. Perschke*, 404 N.E.2d 1200 (Ind. Ct. App. 1980); 2016. *Ind. Att'y Gen. Op No. 3* (Illinois Grain Elevators Participating in Indiana's Grain Indemnity Program and discussing what constitutes a "sale" under the UCC).

<sup>13</sup> Ind. Code § 26-4-4-4(a).

<sup>14</sup> In a delayed payment situation, the price can be fixed, but payment may be deferred for purposes such as deferral of income taxes on the payment received.

<sup>15</sup> Ind. Code § 26-4-1-8. See also, Ind. Code § 26-3-7-2(8) (defining "deferred pricing" or "price later" contracts); [824 IAC 2-13-2](#) (price later contracts). Pricing is set at a date later than the delivery date of the grain.

<sup>16</sup> Ind. Code § 26-3-7-3(a)(16) provides the Director of the IGBWLA with authority to require all grain buyers offering deferred pricing, delayed payments, or contracts linked to the commodity futures or commodity options market in connection with a grain purchase to document the agreement in writing not more than twenty-one (21) days after delivery.

<sup>17</sup> [824 IAC 2-13-2](#) requires a "price later" contract to include a statement printed in bold letters: "NOT STORAGE-TITLE TO THE GRAIN PASSES TO BUYER UPON DELIVERY."

<sup>18</sup> See generally, Ind. Code §§ 26-1-2-106 (definition of "sale"); 26-1-2-305 (open price term); 26-1-2-401 (passing of title).

<sup>19</sup> Ind. Code § 26-4-4-6(a)(1).

<sup>20</sup> Under Ind. Code § 26-4-4-7, the IGBWLA is also responsible for inspecting the books and records of each grain buyer collecting producer premiums.

<sup>21</sup> *Ballard v. Book Heating & Cooling, Inc.*, 696 N.E.2d 55, 56 (Ind. Ct. App. 1998), *trans denied*.

<sup>22</sup> *Pierce v. State Dept. of Correction*, 885 N.E.2d 77, 89 (Ind. Ct. App. 2008).

<sup>23</sup> Ind. Code § 26-4-4-1(c).

<sup>24</sup> Ind. Code § 26-4-4-6(b)(4).

<sup>25</sup> Ind. Code § 26-4-4-8.

<sup>26</sup> Ind. Code § 26-4-4-8(a).

*Posted: 11/14/2018 by Legislative Services Agency*

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