

January 7, 2016

OFFICIAL OPINION 2016-3

Mr. Ted McKinney
Director
Indiana State Department of Agriculture
One N. Capitol Ave., Suite 600
Indianapolis, IN 46204

RE: Illinois Grain Elevators Participating in Indiana's Grain Indemnity Program

Dear Director McKinney:

You requested an opinion from the Office of the Attorney General (OAG) regarding the following issues:

1. Are Illinois grain elevators that buy grain from Indiana farmers eligible to participate in Indiana's Grain Indemnity Program? If so, which transactions?
2. Does a situation where grain hauled to Illinois where agreements as to price are consummated at the elevator constitute a sale in Indiana?
3. What about when representatives of the Illinois grain elevators travel to Indiana farms to solicit agreements with farmers or merely direct advertising materials to Indiana farmers?
4. Does a transaction and agreement completed over the phone constitute a sale in Indiana?

ANALYSIS

According to Ind. Code § 26-4-4-1, "The Indiana grain indemnity fund is established for the purpose of providing money to pay producers for losses incurred due to the failure of a grain buyer or warehouse operator licensed under IC 26-3-7." The fund is financed by premiums that producers pay to buyers when a sale takes place. See Ind. Code § 26-4-4-4 and Ind. Code § 26-4-4-6. According to Ind. Code § 26-4-4-4, [t]he producers of grain shall be charged a producer premium equal to two-tenths percent (0.2%) of the price on all marketed grain that is sold in Indiana." Busers then submit the premium to the Indiana Grain Indemnity Corporation's Board to finance the fund. See Ind. Code § 26-4-4-6.

Ind. Code § 26-4-1-16 says a farmer can participate in the program if he or she is "a producer who has never requested a refund under IC 26-4-5-1, or has reentered the program under IC 26-4-5-2." According to Ind. Code § 26-4-1-18, a producer, the person who the fund was created to financially support in case of a buyer's financial failure, is "an owner of land, a tenant on land, or an operator of a farm that has an interest in and receives all or any part of the proceeds from the sale in Indiana of the grain produced."

The statute does not clearly define “sale in Indiana.” As a result, we must look to the Uniform Commercial Code, codified in Ind. Code § 26-1-2, for a definition. Ind. Code § 26-1-2-106 says, “A ‘sale’ consists in the passing of title from the seller to the buyer for a price (IC 26-1-2-401).” According to Ind. Code § 26-1-2-401, “Unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods.” Where the sale takes place depends on when the physical delivery of the grain takes place. If representatives from Illinois grain elevators come to Indiana to purchase the grain, then the title transfer and sale took place in Indiana and the transaction is covered by the Indiana Grain Indemnity Program. If the Indiana farmers deliver the grain to the grain elevators in Illinois, then the title transfer and sale took place in Illinois and the transaction is not covered by the Indiana Grain Indemnity Program. In addition, making agreements with Indiana farmers in Indiana or sending advertising materials to Indiana farmers do not constitute sales in Indiana since the title has not transferred in either of these instances.

However, it should be noted that the language “[u]nless otherwise explicitly agreed” in Ind. Code § 26-1-2-401 suggests that a buyer and seller can decide when a transfer of title has taken place. If they do not make an explicit agreement regarding when the title transfers, then the statute definition of when a title transfers will rule.

CONCLUSION

Whether a sale takes place in Indiana and is covered by the Indiana Grain Indemnity Program depends on when the grain title transferred from the Indiana farmer to the buyer. Unless the buyer and seller agree otherwise, the title transfers after physical delivery of the grain is completed. If representatives from the grain elevators come to Indiana to purchase, pick up, and transport the grain back to Illinois, then the title transfer and sale took place in Indiana. As a result, the sale is covered by the Indiana Grain Indemnity Program. If Indiana farmers ship grain to the Illinois grain elevators, then the title transfer and sale took place in Illinois. The sale did not occur in Indiana and is not covered by the Indiana Grain Indemnity Program.

Sincerely,

Gregory F. Zoeller
Attorney General