OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. W.S. Bussey, Chief
Weights & Measures Division
Department of Agriculture
Austin, Texas

Dear Sir:

Opinion No. O-1147
Re: Application of Article 5680, Revised Civil Statutes, to Gosho Concentration and Compress Company.

Your request for an opinion of this department as to whether the weigher of the Gosho Concentration and Compress Company, Galveston, Texas, must comply with the provisions of Article 5680, Revised Civil Statutes of Texas, has been received by this department.

Article 5680, Revised Civil Statutes of Texas, reads as follows:

"Any person engaged in the business of public weighing for hire, or any person, who shall weigh or measure any commodity, produce or article, and issues therefor a weight certificate or weight sheet, which shall be accepted as the accurate weight upon which the purchase or sale of such commodity, produce or article is based, shall be known as a Public Weigher, and shall comply with the provisions of this chapter. The provisions of this article shall not apply to the owner, manager, agent or employees of any compress or any public warehouse in their operation as a warehouseman. This

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> exemption shall not apply in any manner to any Texas port."

We call your attention to the first sentence of the above statute, the latter portion of which, says "which shall be accepted as the accurate weight upon which the purchase or sale of such commodity, produce or article is based." That language indicates to us that the Legislature was trying to protect the buying public from inaccurate and false weights which were the basis of sale of commodities, produce or other articles.

The correspondence enclosed with your letter reveals that the Goshe Concentration and Compress Company is a company's company designed for the purpose of storing and handling the cotton products of the Goshe Cotton Company in Galveston, Texas.

While the cotton may be weighed before entering the warehouse there, it is not necessarily so and no particular price is had for the weighing of the cotton when received at the warehouse. Your letter further states that the weight sheet, if any, made by the person weighing the cotton there in the warehouse is not at any time used as the weight basis for the sale of this cotton. The correspondence enclosed informs us that a sale of this cotton is made on the basis of mutual weight ascertained at destination. Under the facts that we have the weight sheet, if any, made at the Goshe Concentration and Compress Company does not serve as an accurate weight upon which the purchase or sale of such commodity is made. In our opinion the weigher in question is not a public weigher within the meaning of the statute or the intention of the Legislature.

In this instance we believe there is

Hon. W.S. Bussey, Page 3

no evasion of Article 5680, Revised Civil Statutes, and that article does not require that the person employed on a salary basis to weigh the cotton at the Gosho Concentration and Compress Company is such a person as is included under the terms of the above statute, and is therefore not required to post a bond or meet with the other requirements of that Article.

We trust that this answers your inquiry in this particular instance.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Morris Hodges.

Morris Hodges
Assistant

APPROVED JUL 28, 1939

W. F. Moore

FIRST ASSISTANT
ATTORNEY GENERAL

APPROVED
OPINION
COMMITTEE
BY [signature]
CHAIRMAN