

OPINION NO. 87-020**Syllabus:**

1. The owner or legal holder of a ticket or receipt issued for an agricultural commodity, who is a creditor of the licensed handler for the value of the agricultural commodity but who did not produce the agricultural commodity or cause the agricultural commodity to be produced, is a depositor under R.C. 926.01(D)(2). A depositor who has made a demand for settlement of an obligation concerning an agricultural commodity for which a fee was required to be remitted under R.C. 926.16 and whose demand has been dishonored, may, after providing the Director of the Department of Agriculture or his authorized representative with evidence of his demand and the dishonor of his demand, file a claim with the

Director of the Department of Agriculture for indemnification of his losses out of the agricultural commodity depositors fund.

2. An individual who is not a licensed handler, but who purchases an agricultural commodity from a licensed handler and leaves the agricultural commodity with the licensed handler is a depositor under R.C. 926.01(D)(1) or (2). A depositor who has made a demand for settlement of an obligation concerning an agricultural commodity for which a fee was required to be remitted under R.C. 926.16 and whose demand has been dishonored, may, after providing the Director of the Department of Agriculture or his authorized representative with evidence of his demand and the dishonor of his demand, file a claim with the Director of the Department of Agriculture for indemnification of his losses out of the agricultural commodity depositors fund.

To: Steven D. Maurer, Director, Ohio Department of Agriculture, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 2, 1987

I have before me your request for my opinion concerning an apparent conflict between the provisions of R.C. 926.01 and R.C. 926.18, which provide for the indemnification of persons who incur financial loss due to the insolvency of warehouses storing agricultural commodities. In particular, your questions concern the applicability of these statutes to creditors who have taken warehouse tickets or receipts as collateral for a loan. Specifically, you ask:

1. Under Section 926.18 of the Revised Code, is the holder of a negotiated warehouse receipt who neither produced nor delivered the underlying [agricultural] commodities eligible for indemnification under the Ohio Agricultural Commodity Depositors Fund providing all other conditions precedent have been met?
2. May an individual who is not a licensed handler who purchases [agricultural] commodities from a licensed handler and leaves said commodities with the licensed handler for storage under a bailment or delayed price agreement qualify for indemnification under the Agricultural Commodity Depositors Fund in the event of an insolvency of the licensed handler?

Pursuant to R.C. 926.16(A), the General Assembly has provided for the creation of an agricultural commodity depositors fund to indemnify persons who suffer financial loss due to the insolvency of warehouses in which they have stored agricultural commodities. See R.C. 926.01 (defining several terms as used in R.C. Chapter 926).¹ R.C. 926.18(A) authorizes

¹ R.C. 926.01 provides in part:

As used in this chapter:

(A) "Agricultural commodity" means barley, corns, oats, rye, grain sorghum, soybeans, wheat,

"depositors" who have made a demand for "settlement of an obligation concerning an agricultural commodity on which a fee was required to be remitted under section 926.16 of the Revised Code," and whose demand has been dishonored, to file a claim with the Director of the Department of Agriculture for indemnification of their loss out of the agricultural commodity depositors fund. The depositor must, however, first provide the Director of the Department of Agriculture or his authorized representative with evidence of his demand and its subsequent dishonor. A "depositor" is defined in R.C. 926.01:

sunflower, speltz, and any other agricultural crop which the director of agriculture may designate by rule. "Agricultural commodity" does not mean any grain that is offered for sale as seed.

(B) "Agricultural commodity handling" or "handling" means:

(1) Engaging in or participating in the business of buying, selling, exchanging, or negotiating or soliciting a purchase, sale, resale, exchange, or transfer of an agricultural commodity;

(2) Operating a warehouse as a bailee for the receiving, storing, shipping, or conditioning of an agricultural commodity;

(3) Receiving into a warehouse an agricultural commodity purchased under a delayed price agreement.

(C) "Agricultural commodity handler" or "handler" means any person who is engaged in the business of agricultural commodity handling, except that a person who sells only those agricultural commodities that he has produced, or buys agricultural commodities only for his own use, is not an agricultural commodity handler.

(E) "Receipt" means a warehouse receipt issued by a licensed handler.

(F) "Nonnegotiable receipt" means a receipt on which it is stated that the agricultural commodity received will be delivered to the bearer or to any other specified person.

(G) "Negotiable receipt" means a receipt on which it is stated that the agricultural commodity received will be delivered to the bearer or to the order of any person named in the receipt.

(H) "Ticket" means a scale weight ticket, a load slip, or any evidence, other than a receipt, given to a depositor by a licensed handler upon delivery of an agricultural commodity to the handler.

(I) "Warehouse" means any building, bin, protected enclosure, or similar premises under the control of a licensed or unlicensed handler used for receiving, storing, shipping, or handling an agricultural commodity.

(J) "Storage" means the deposit of an agricultural commodity into a warehouse either for the account of the licensed handler operating the warehouse or for the account of a depositor.

As used in this chapter:

...
(D) "Depositor" means:

(1) Any person who delivers an agricultural commodity to a licensed handler for storage, conditioning, shipment, or sale;

(2) Any owner or legal holder of a ticket or receipt issued for an agricultural commodity who is a creditor of the licensed handler for the value of the agricultural commodity;

(3) Any licensed handler storing an agricultural commodity that he owns solely, jointly, or in common with others in a warehouse owned or controlled by him or any other licensed handler.

Further, R.C. 926.18(B) provides that:

The agricultural commodity depositors fund shall be liable to a depositor for any moneys that he has not recovered through other legal and equitable remedies for one hundred percent of the first ten thousand dollars of his loss and eighty percent of the remaining dollar value of his loss as determined under divisions (A)(1) and (2) of this section. (Emphasis added.)

Thus, when read together with the definition of a depositor, R.C. 926.18(B) appears to allow all persons who qualify under the definition of "depositor" to file a request for indemnification out of the agricultural commodity depositors

(K) "Producer" means any person who grows an agricultural commodity on land that he owns or leases.

(L) "Agent" means any person, other than a producer, who delivers an agricultural commodity to a licensed handler, either for the sale or for storage, for the account of the producer.

...
(O) "Bailee" means a person to whom an agricultural commodity is delivered in trust for storage in a warehouse with title remaining in the name of the depositor.

(P) "Bailor" means a person who delivers an agricultural commodity to a bailee in trust for storage in a warehouse with title remaining in the name of the depositor.

(Q) "Bailment agreement" means a bailor-bailee agreement between a depositor and a licensed handler as stated in the terms of a receipt that is issued for an agricultural commodity in storage and subject to the requirements of this chapter governing the use of a receipt.

(R) "Delayed price agreement" means a written contract or agreement signed by a licensed handler and a depositor that covers the sale and transfer of title of an agricultural commodity and contains provisions for establishing the service charges and the method for pricing the commodity at a later date.

fund, so long as they have made a demand for the agricultural commodity, the demand has been dishonored, and they have provided evidence of the demand and subsequent dishonor to the Director of the Department of Agriculture or his authorized representative.

However, you also note that R.C. 926.18(A) states that the amount of indemnification is to be determined under R.C. 926.18(A)(1) and (2), which provide:

(1) The commodity advisory commission created in section 926.32 of the Revised Code shall establish the dollar value of the loss incurred by a depositor holding a receipt or ticket for agricultural commodities that he produced or caused to be produced and that he delivered to the handler under a delayed price agreement or under a bailment agreement. The value shall be based on the fair market price being paid to producers by handlers for the commodities on the date on which the director received notice that the receipt or ticket was dishonored by the handler. All depositors filing claims under this division shall be bound by the value determined by the commission.

(2) The dollar value of the loss incurred by a depositor who has sold or delivered for sale, exchange, or solicitation or negotiation for sale agricultural commodities that he produced or caused to be produced and who is a creditor of the handler for all or part of the value of the commodities shall be based on the amount stated on the obligation on the date of sale. (Emphasis added.)

These divisions suggest that a depositor may request indemnification for his losses from the agricultural commodity depositors fund only if he has produced the agricultural commodity. The emphasized portion of R.C. 926.18(A)(1) suggests that the person must also have delivered the agricultural commodity. It is this apparent conflict which underlies both of the questions you present.

I turn now to your first question, concerning the eligibility of persons who have not produced the stored agricultural commodity or caused the agricultural commodity to be produced, but who nevertheless are owners or legal holders of a ticket or receipt for an agricultural commodity. However, before addressing the apparent statutory conflict outlined above, I find it necessary to first determine whether the persons in question qualify as "depositors" under R.C. 926.01(D).

As the above quoted portions of 926.01(D) indicate, a person who delivers an agricultural commodity to a licensed handler for storage, conditioning, shipment, or sale is clearly a depositor under R.C. 926.01(D)(1). Likewise, a licensed handler who stores an agricultural commodity which he owns in whole or in part may be a depositor under R.C. 926.01(D)(3). Your first question, however, concerns persons who have not produced or delivered the agricultural commodity, and who are not licensed handlers. If these persons are to be included as depositors they must be so defined under R.C. 926.01(D)(2). The first portion of R.C. 926.01(D)(2) provides that a depositor is "[a]ny owner or legal holder of a ticket or receipt issued for an agricultural commodity..." This part of the definition appears to contemplate the inclusion of persons

who have not produced or delivered the agricultural commodity, and who are not licensed handlers. This would include, for example, a creditor who has taken an agricultural commodity ticket or receipt as collateral for a loan to a person who has produced the commodity. The second part of R.C. 926.01(D)(2) also requires, however, that the person be a "creditor of the licensed handler for the value of the agricultural commodity." This language is capable of different interpretations. One possible interpretation is that this language was intended to require that the persons requesting indemnification have made a loan to a licensed handler using the agricultural commodities held by the licensed handler as collateral. Under this interpretation, the only persons who would qualify as depositors pursuant to R.C. 926.01(D)(2) would be the secured creditors of a licensed handler.

However, the purpose of R.C. 926.18 is primarily remedial. See State ex rel. National Mutual Insurance Co. v. Conn., 115 Ohio St. 607, 155 N.E. 138 (1927) (a remedial statute is a legislative response to abuses which it deems necessary in order to safeguard the public interest). As such, the strict interpretation of the word "creditor" employed above must be eschewed in favor of a more liberal reading in accord with the purposes sought to be achieved through the statute's enactment. See R.C. 1.11; State ex rel. Gaddis v. Industrial Commission, 133 Ohio St. 553, 15 N.E.2d 146, (1938); Delassandro v. Industrial Commission, 110 Ohio St. 506, 144 N.E. 138 (1924). The primary object sought to be attained through the enactment of R.C. 926.18 was the indemnification of persons who have entrusted agricultural commodities to a licensed handler who has in turn failed to maintain an adequate supply of the agricultural commodity on hand to satisfy the demands of those who have stored the agricultural commodity with him. Thus, the primary focus of the statute is on situations involving insolvent or bankrupt licensed handlers. See e.g., R.C. 926.14 (providing procedures for the seizure, audit and appointment of receivers by the Director of the Department of Agriculture where a licensed handler does not have sufficient agricultural commodities on hand to satisfy outstanding tickets and receipts). In light of this purpose, it is apparent that the statutory requirement that a person be a "creditor of the licensed handler for the value of the agricultural commodity" does not refer to persons who have made a secured loan to the licensed handler. The statutory language must instead be interpreted as referring to creditors of a licensed handler who is insolvent or bankrupt. In this context, an owner or legal holder of a ticket or receipt for an agricultural commodity is a "creditor" of the insolvent licensed handler for the liquidated value of the agricultural commodity that he will not receive due to the licensed handler's insolvency. I therefore conclude that a person who neither delivered the agricultural commodity to the licensed handler nor is a licensed handler himself, may be a depositor if he is the owner or legal holder of a ticket or receipt for an agricultural commodity and is owed the liquidated value of the agricultural commodity due to the insolvency of the licensed handler.

I must next determine whether a depositor as defined by R.C. 926.01(D) must have produced the agricultural commodity or caused the commodity to be produced, and delivered the agricultural commodity to the licensed handler, in order to qualify for indemnification from the agricultural commodity depositors fund pursuant to R.C. 926.18(A). For the following

reasons, I conclude that a depositor need not have delivered and produced the agricultural commodity or have caused the agricultural commodity to be produced, as a condition precedent to indemnification out of the agricultural commodity depositors fund.

As quoted previously, R.C. 926.18(A)(1) states that the Commodity Advisory Commission "shall establish the dollar value of the loss incurred by a depositor holding a receipt or ticket for agricultural commodities that he produced or caused to be produced and that he delivered to the handler." (Emphasis added.) A similar provision is included in R.C. 926.18(A)(2). This language is capable of two interpretations. The General Assembly may have intended, through these provisions, to further limit the definition of depositor to those persons who not only fall within the confines of R.C. 926.01(D)(1)-(3), but also to those persons who have produced the agricultural commodity or caused the agricultural commodity to be produced. It may also be argued, however, that through these provisions, the legislature intended to require that the amount of the depositor's loss be measured according to that which would have been incurred by the initial or original "depositor," *i.e.*, the loss incurred by the person who produced the agricultural commodity or caused the agricultural commodity to be produced and delivered the commodity, even if that person is not the depositor who is requesting indemnification.

It is a well established rule of statutory construction that arguably conflicting statutory provisions are to be harmonized where possible to yield a reasonable result. Board of County Commissioners v. Toledo, 28 Ohio St. 2d 214, 277 N.E.2d 193 (1956). An interpretation of R.C. 926.18(A)(1) and (2) restricting indemnification to those depositors who have produced the agricultural commodity or who caused the agricultural commodity to be produced would largely nullify the definition of "depositor" by limiting the class of persons who would otherwise be included under the definition in R.C. 926.01(D). Such an interpretation is generally disfavored. Cf. Sloan v. Hubbard, 34 Ohio St. 583 (1878) (an interpretation nullifying a provision is never favored when a reasonable supportive interpretation is available). The alternative interpretation, that through the language in question the General Assembly intended to require that the amount of loss incurred by the depositor be measured according to the loss which would have been incurred by the person who produced the agricultural commodity or caused the agricultural commodity to be produced and delivered the commodity, does not limit the definition of depositor found in R.C. 926.01(D). Therefore, I conclude that a depositor need not have delivered and produced the agricultural commodity or have caused the agricultural commodity to be produced as a condition precedent to indemnification out of the agricultural commodity depositors fund.

This conclusion is also supported by other statutory language employed by the General Assembly in R.C. 926.18. R.C. 926.18(B) provides that "[t]he agricultural commodity depositors fund shall be liable to a depositor for any moneys that he has not recovered...as determined under divisions (A)(1) and (2) of this section." (Emphasis added.) Further, the final sentence of R.C. 926.18(A) states that the amount of indemnification is to be determined in accordance with the two subdivisions which follow. These provisions indicate that the

purpose of R.C. 926.18(A)(1) and (2) is not to determine who may receive indemnification out of the agricultural commodity depositors fund. Rather, the quoted language demonstrates that the legislature intended that these divisions be employed to determine the amount of loss that a depositor has incurred, and in particular, that the remedy be equal to the actual loss which would have been incurred by the depositor who produced the agricultural commodity or caused the agricultural commodity to be produced and delivered the commodity to the licensed handler.

The foregoing analysis is also applicable to your second question concerning whether an individual who is not a licensed handler but who purchases an agricultural commodity from a licensed handler and leaves the commodity with the licensed handler under a bailment or delayed price agreement qualifies for indemnification out of the agricultural commodity depositors fund. A person who leaves an agricultural commodity with a licensed handler under a bailment or delayed price agreement will generally receive a ticket or receipt as evidence of the transaction. Thus, these persons will generally fall within the definition of depositor as set out in R.C. 926.01(D)(2). Consequently, if the depositor has complied with the notice and filing requirements set out in R.C. 926.18(A), the depositor will qualify for indemnification out of the agricultural commodity depositors fund.

However, even where a ticket or receipt is not received, the person still may qualify as a depositor under R.C. 926.01(D)(1). Pursuant to R.C. 926.01(D)(1) a depositor is defined as "[a]ny person who delivers an agricultural commodity to a licensed handler for storage..." (Emphasis added.) Admittedly, a person who purchases an agricultural commodity from a licensed handler and leaves the commodity with the licensed handler under a bailment or delayed price agreement has not physically "delivered" the commodity to the licensed handler. However, where a word has acquired a fixed legal significance and it is used in a statute, the word is presumed to have been used in that sense by the legislature. R.C. 1.49(F); Geiger v. Geiger, 117 Ohio St. 451, 160 N.E. 28 (1927). In addition to the concept of physical transfer, the term "delivery" has also been interpreted as including a "constructive" transfer in which manual transfer from one person to another is not necessary. Poor v. American Locomotive Co., 67 F.2d 626 (7th Cir. 1933).

Furthermore, it is a well-established rule of statutory construction that when a literal reading of a statute will lead to an absurd result, "the strict letter of the statute must yield to the obvious intent." Stanton v. Frankel Brothers Realty Co., 117 Ohio St. 345, 158 N.E. 868 (1927); State ex rel. Fay v. Archibald, 52 Ohio St. 1, 38 N.E. 314 (1894); 1983 Op. Att'y Gen. No. 83-093. To interpret the word "deliver" according to its common meaning would, in effect, counsel the purchaser of an agricultural commodity to withdraw the grain from the licensed handler, then redeliver the commodity a moment later, solely to qualify for indemnification. Therefore, I must conclude that a depositor who is not a licensed handler himself, but who purchased an agricultural commodity from a licensed handler, and who leaves the commodity with a licensed handler under a bailment or delayed price agreement, falls within the definition of depositor as set out in R.C. 926.01(D)(1). As depositors, such persons may also be eligible for indemnification out of the agricultural depositors

fund, if they have complied with the requirements set out in R.C. 926.18(A).

In conclusion, it is my opinion and you are hereby advised that:

1. The owner or legal holder of a ticket or receipt issued for an agricultural commodity, who is a creditor of the licensed handler for the value of the agricultural commodity but who did not produce the agricultural commodity or cause the agricultural commodity to be produced, is a depositor under R.C. 926.01(D)(2). A depositor who has made a demand for settlement of an obligation concerning an agricultural commodity for which a fee was required to be remitted under R.C. 926.16 and whose demand has been dishonored, may, after providing the Director of the Department of Agriculture or his authorized representative with evidence of his demand and the dishonor of his demand, file a claim with the Director of the Department of Agriculture for indemnification of his losses out of the agricultural commodity depositors fund.
2. An individual who is not a licensed handler, but who purchases an agricultural commodity from a licensed handler and leaves the agricultural commodity with the licensed handler is a depositor under R.C. 926.01(D)(1) or (2). A depositor who has made a demand for settlement of an obligation concerning an agricultural commodity for which a fee was required to be remitted under R.C. 926.16 and whose demand has been dishonored, may, after providing the Director of the Department of Agriculture or his authorized representative with evidence of his demand and the dishonor of his demand, file a claim with the Director of the Department of Agriculture for indemnification of his losses out of the agricultural commodity depositors fund.