

Statute, Constitutionality Of. Constitutional Law.

Senate Bill, No. 138, providing for the establishment of districts in which the running of live stock at large is prohibited is a constitutional measure.

February 9th, 1911.

Hon. Geo. McCone, Chairman,
Stock Growing and Grazing Committee,
Senate Chamber, Helena, Montana.

Dear Sir:

I am in receipt of Senate Bill No. 138, providing for the establishment of districts in which the running of livestock at large is prohibited, together with your verbal request for an opinion upon the constitutionality of this proposed measure.

You are advised that in my opinion the bill is not subject to successful attack on the ground that it is unconstitutional. A similar bill known as House Bill No. 238, is now under consideration by the live stock and public range committee of the lower branch of the legislature, and concerning that bill, I addressed a letter on February 1st, 1911, holding that the law was unconstitutional and against public policy. The provisions of this bill are similar to the provisions of Senate Bill No. 138, except that upon petition the board of county commissioners may under the provisions of House Bill No. 238 establish these closed districts. That I think, is an objectionable feature in that it is an attempt to delegate legislative power to the board of county commissioners. Senate Bill No. 138 avoids this error in that it reposes in the people the power to say at an election held for the purpose, whether the district shall be created or not. The senate bill is distinctly a local option law and the people having the power to decide by election whether the law shall become effective in their particular district, it is in my opinion constitutional and would be so held by the supreme court. In the case in re O'Brien 29 Mont. 530 a similar law relating to the local option law concerning the sale of liquors was held to be constitutional, first, in that it is not a delegation of legislative power to the people; second, that the local option liquor law is not violative of the constitutional provisions prohibiting local or special legislation; third, that the law is complete in its provisions, though it takes effect in each county only after the favorable vote of the people. The court in the case above referred to quotes with approval the case of Territory vs. O'Connor, 5 Dak. 397; 41 N. W. 746, where the Dakota court uses the following language:

"Matters affecting the police, such as the sale of intoxicating drinks, running at large of cattle, and kindred questions, are so differently regarded in different localities that it has been by no means uncommon to submit them to the people of the locality to be affected by their exercise; and laws so submitting such questions have been almost uniformly sustained, though not always upon the same ground.

You are therefore advised that the proposed Senate Bill No. 138, is in my opinion a constitutional measure.

Yours very truly,

ALBERT J. GALEN,

Attorney General.