

Opinion No. 532**Highways—Stock Passes—Cattle Passes
—Class Legislation—County
Commissioners.**

HELD: If there is any conflict between Chapter 153, Laws of 1933, permitting county commissioners to install "stock passes" over highways, and Section 1653, R. C. M., 1921, then the former, being the last expression of the Legislative will, would control.

Chapter 153, Laws of 1933, contains nothing which makes it obnoxious as class legislation.

May 10, 1934

We acknowledge receipt of yours of the 19th of April in which you request an opinion by this office as to whether there is any conflict between Chapter 153, Laws of 1933, and Section 1635, R. C. M. 1921. You state that it is your opinion Chapter 153 is class legislation and that it also conflicts with Section 1635.

Section 1635, R. C. M. 1921, provides as follows:

"Any ten, or a majority of the freeholders of a road district, taxable therein for road purposes, may petition in writing the board of county commissioners to establish, change, or discontinue any common or public highway therein. When such a highway is petitioned for upon the dividing line between two counties, the same course must be pursued as in other cases, except that a copy of the petition must be presented to the board of county commissioners of each county, who shall act jointly."

Chapter 153, Laws of 1933, provides:

"Section 1. Where a public road or roads connects with a state highway, which state highway is fenced on both sides, the County Commissioners, of the county in which said roads are located, may cause to be constructed and maintained thereon extensions of the fence on the sides of the state highway and across the intersecting road leaving in such fences a pass across which must be constructed a passage which will permit the passage of automobiles and trucks but shall prevent and exclude loose livestock from drifting upon said state highway, and there shall also be maintained in said extensions a gate to permit the passage of livestock, wagons or other vehicles.

"Section 2. County Commissioners may construct, or cause to be constructed under their direction, on public or county roads, passes across which such roads may continue and which shall be so constructed that automobiles and trucks may cross same and which shall be impassable for livestock. Where necessary, gates shall also be maintained as provided in Section 1 of this Act; provided, that it is the spirit and intent of the statute, that the discretion granted to Boards of County Commissioners under this Act shall consider primarily the use and benefit of public roads to the general public.

"Section 3. There may be maintained in a legal fence a pass so constructed that automobiles and trucks may pass over the same and which will prevent the passage of livestock across said opening without depriving such fence of the character of a legal fence under the laws of this state."

There is no Constitutional question involved here, in our opinion, and if there is any conflict between the 1933 Act and Section 1635, the 1933 Act, being the last expression of the Legislature, would control. (59 C. J. Sec. 621, page 1051, and cases cited.)

Section 1622, R. C. M. 1921, as amended by Chapter 59, Laws of 1929, vests in Boards of County Commissioners general supervision over public highways in their respective counties. Chapter 153, in Section 2, leaves it to the discretion of the county board as to whether or not, and in what in-

stances and cases, they will install "stock passes" over highways as provided in the 1933 Act. The Board is the chief executive authority of the County. (*Hersey v. Neilson*, 47 Mont. 132), and are presumed to act for the best interests of the county as a whole, and may install such passes or not as they, in their judgment, deem best in the interests of all concerned.

We find nothing in Chapter 153 that makes it obnoxious as class legislation. There is nothing in its provisions to indicate it shall be applied to any particular class to the detriment of any other class. Obviously the Act is intended to prevent livestock from running at large upon the highways and yet at the same time permit the unobstructed passage of motor vehicles, and possibly to enable stockmen to control their stock and save fencing where a highway passes through grazing tracts of land. It affects all stockmen alike.

Class legislation is said to "consist of those laws which are limited in their operation to certain persons or classes of persons, * * * or to certain districts of the territory of a state." (12 C. J. Sec. 855, page 1128.) "As a matter of fact class legislation is not forbidden. All, indeed, that is required is that there shall be a reasonable public necessity for the law or statute, and that it shall apply generally to all who are equally affected." (*Gunn v. Minneapolis Ry. Co.* 34 N. D. 418, 158 N. W. 1004.)

We think the Act a clear and valid exercise of Legislative power.