

Opinion No. 116.

**Livestock—Inspection at Destination—
Shipment in Trucks from the
State—Discretion of Live-
stock Commission.**

HELD: The Livestock Commission does not have discretion to authorize shipment of livestock by trucks and inspection at destination where shipment is from the state.

July 1, 1937.

Mr. Paul Raftery
Secretary, Montana Livestock Commission
The Capitol

Dear Mr. Raftery:

You have requested my opinion as to whether the Livestock Commission is given the authority to pass a resolution regulating the shipment of livestock in trucks. The proposed resolution reads as follows:

"On and after July....., cattle shipped by truck to market points where regularly employed stock inspectors of the Montana Livestock Commission are located, and where such cattle carry recorded brand of the shipper, may be moved in trucks owned by the owner of the cattle without inspection at loading, and subject to inspection at destination by a regularly employed market inspector.

"Operators of licensed commercial trucks may move cattle to market points where regularly employed stock inspectors of the Montana Livestock Commission are located, subject to brand inspection at destination, provided permit is issued by the Livestock Commission to cover each individual truck and each individual truck driver. Application for

permit to be made to the office of the Livestock Commission at Helena and permit to be exhibited to any peace officer, stock inspector or highway patrolman upon demand."

While Section 3324 R. C. M. 1935, as amended by Chapter 133, Laws of 1937, gives to the Livestock Commission authority to permit shipments of livestock by truck from one county to another without inspection, in the event there is an inspection made at destination by a regularly employed stock inspector (see our opinion to you, dated April 17, 1937, being No. 88, Volume 17, Opinions of the Attorney General), Chapter 136, Laws of 1937, which amends Section 3321 R. C. M. 1935, relating to shipments from the state, permits an exception only in the case of a railroad company. This section reads in part as follows:

"* * * provided, however, that whenever any of the class of stock aforementioned shall be loaded for shipment with any railroad company and consigned to any point where the state board of stock commissioners maintain a stock inspector, then and in such event only, such shipments so consigned, need not be inspected in this State before shipment."

Therefore, in so far as the said resolution authorizes shipment of livestock by truck out of the state, without inspection, it is unauthorized by statute.

It is noted that the first paragraph of the resolution relates to shipments "in trucks owned by the owner of the cattle." While this office is not concerned with policy, a question as to the practicability of this exception so far as the enforcement of law is concerned is raised, aside from the question of discrimination without a proper basis for such classification or discrimination.