

My dear Mr. Gabriel:

You have asked for an analysis of Section 3324, Revised Codes of Montana, 1935, as amended by Chapter 85, Laws of 1939, as it applies to the following facts.

A horse buyer purchased a horse in Phillips county and trailed the horse from Phillips county across the Missouri river into Fergus county without having the horse inspected.

Section 3324 provides that, "It shall be the duty of any and all persons * * * removing, or taking any cow, ox, bull, stag, heifer, steer, calf, horse, mule, mare, colt, foal, or filly from one county to another to cause the same to be inspected at point of loading for brands by a state stock inspector * * *. However, an exception is made * * * that the provisions of this Act shall not apply to said stock when driven by the owner from one county to another for the purpose of pasturing, feeding, or changing the range thereof, nor to any stock so removed or taken from one county to another by any person, association or corporation, when such stock is used in the ordinary conduct of his or its business, and such person, association or corporation has been the owner of said stock to be removed for at least three months; * * *"

The Act then applies to all persons not within this exception who take any of the enumerated animals from one county to another, and the place where the inspection is made is specifically made "point of loading." It is my opinion that one who trails animals from one county to another is not doing so for the purpose of pasturing, feeding, etc., nor are they being used in "the ordinary conduct of his business" as that term is used by the legislature, and therefore must have those animals inspected at the place designated by the statute.

You have also asked as to which county has jurisdiction of the offense, if any.

Section 3327, Revised Codes of Montana, 1935, as amended by Chapter 133, Laws of 1937, prescribes a penalty for the violation and provides that any person removing or attempting to remove any livestock, etc., without first having received the certificate of inspection, shall be guilty of a misdemeanor. This is one of those offenses wherein both counties have concurrent jurisdiction. An analogous case would

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**Livestock, Inspection—Counties,
Jurisdiction**

HELD: A purchaser trailing a horse from one county to another must have such animal inspected.

The offense is a misdemeanor, of which the counties have concurrent jurisdiction.

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Mr. Fred C. Gabriel
County Attorney
Malta, Montana

be where mortgaged property is taken to another county and there disposed of and held; in that situation the offense may be prosecuted in either jurisdiction. (State v. Perry, 70 SE. 304, see Chapter 64, of Penal Code, 1935.)