

No. 250

**AUCTIONEER PROHIBITED FROM CONDUCTING
LIVESTOCK MARKET WITHOUT LICENSE—LIVE-
STOCK MARKET—LIVESTOCK COMMISSION**

Held: An auctioneer, operating a general salesyard, where, among other things, he sells livestock, is required to qualify under the provisions of Chapter 52, Laws of 1937, by filing with the Livestock Commission of Montana a written statement as to his financial responsibility, and of his ownership or control of adequate facilities for the care, sorting, feeding, loading, unloading, and shipment of livestock for the operation of a livestock market, and tendering the fee and furnishing the bond prescribed therein. He cannot operate a livestock market without first obtaining a license so to do.

September 23, 1941.

Mr. E. Gardner Brownlee
County Attorney
Ravalli County
Hamilton, Montana

Dear Mr. Brownlee:

You have submitted the following:

“(name omitted) operates what he calls a sale yard. He sells practically anything, from furniture to hogs, at auction every week, and collects a flat commission for his services. Among the things he

sells are occasional heads of livestock. His yard has a couple of corrals for holding the stock prior to sale, but he doesn't keep or feed stock there.

"He has a license as an auctioneer as provided for by section 4147, R. C. M., 1935, and has filed his bond. His contention is that he is merely operating as an auctioneer, and is not operating a livestock market as contemplated by Chapter 52 of the Laws of '37. The question, put concisely, then is this: 'Is an auctioneer, operating a general sales-yard, where, among other things, he sells an occasional head of livestock, required to have a license as provided by Chapter 52 of the Laws of '37, said auctioneer already being licensed under Section 4147, R. C. M., 1935?'"

In order to determine the question presented here, it becomes necessary to construe the provisions of Chapter 320, recorded in Volume II of our political code of 1935, pertaining to the "regulation of auctioneers," and likewise Chapter 52, Laws of 1937, which is "An Act Providing for the Establishment, Regulation, Supervision, Licensing and Bonding of Livestock Markets, and Prescribing a Penalty for Violations Thereof," to ascertain therefrom whether one conflicts with the other, thereby nullifying all or any of the provisions of the former.

Therefore, we proceed now to analyze the various pertinent provisions of the chapters aforesaid to determine the precise question. Sections 4147, 4151, 4152 and 4153 of the Revised Codes of Montana, 1935, are as follows:

"Section 4147. Auctioneer—authority and bond. Any citizen of this state may become an auctioneer, and be authorized to sell real or personal property at public auction in any county in this state, on giving a bond in accordance with the provisions of this chapter for the faithful performance of his duties."

"Section 4151. Auctioneers to designate places of business. No auctioneer in any city of this state must have at one time more than one place for holding auction; and every such auctioneer, before acting as such, must file with the clerk of the county in which said city is situated a writing signed by him, designating such place, and naming therein the partners, if any, engaged with him in business."

"Section 4152. To sell at no other place. No auctioneer must expose to sale any article at any other place than that so designated, except goods sold in original packages as imported, household furniture, and such bulky articles as have been usually sold in warehouses, or in the public streets, or on the wharves."

"Section 4153. Power of city authorities. The city council or other corresponding authority of each city may designate such place or places therein for the sale by auction of horses, carriages, and household furniture, as they deem expedient."

Thus the provisions of the immediate sections hereinabove quoted provide any citizen of this state may become an auctioneer and be authorized to sell real and personal property at public auction in any county in the state on giving bond for the faithful performance of his duties, as provided for in Section 4148 of the Revised Codes of Montana, 1935. No auctioneer in any city of this state may at one time have more than one place for holding auctions, and he must not expose for sale any articles at any other place than that so designated, except goods sold in original packages as imported, household furniture, and such bulky articles as have been usually sold in warehouses, or in the public streets, or on the wharves. The city council or other corresponding authority of each city may designate such place or places for the sale by auction of horses, carriages, and household furniture, as it may deem expedient.

Of course it is a well-known rule of law that livestock, such as horses, mules, cattle, swine, sheep, goats, etc., are considered to be personal property as will more fully hereafter appear. Chapter 52, Laws of 1937, reads in part as follows:

"Section 1. Establishment. Any person upon making to the livestock commission of the State of Montana, a written statement satisfactory to said commission, of financial responsibility, and of ownership or control of adequate facilities for the care, sorting, feeding, loading, unloading, and shipment of livestock for the operation of a livestock market, and tendering the fee and furnishing the bond prescribed herein, may secure a license from the said commission, to establish and operate within the State of Montana for one year, a livestock market as hereinafter defined. The operation of a livestock market in this state without such license is a penal offense, punishable as hereinafter prescribed.

"Section 2. Definitions. When used in this act.

"a. The term 'livestock' shall mean and include horses, mules, cattle, swine, sheep and goats.

"b. The term 'livestock market' shall mean a place where a person, partnership or corporation shall assemble livestock for either private or public sale. Such service is to be compensated for by owner, on a commission basis, except: (1) Any place used solely for a dispersal sale of the livestock of a farmer, dairyman, livestock breeder or feeder who is discontinuing said business and no other livestock is there sold or offered for sale: (2) Any farm, ranch, or place where livestock either raised or kept thereon for the grazing season or for fattening is sold, and no other livestock is brought there for sale or offered for sale: (3) The premises of any butcher, packer, or processor who received animals exclusively for immediate slaughter: (4) The premises of any person, firm, or corporation engaged in the raising of livestock for breeding purposes only, who limits his or its sales to animals of his or its own production: (5) Any place where an association of breeders of livestock of any class assemble and offer for sale and sell under their own management any livestock, who assume all responsibility of such sale and the title of livestock sold.

"c. The term 'person' shall mean and include all persons co-partnership, association, or corporation.

"Section 3. Licenses. After May 1, 1937, no person shall engage in the operation of a livestock market within the State of Montana without first procuring a license from the livestock commission, and paying therefor a fee of one hundred dollars (\$100.00). Said license may be renewed to eligible applicants prior to May first of each calendar year thereafter, upon regular application for, and payment of the regular fee. An application for a license to establish and operate a livestock market shall be in writing upon a blank form to be furnished and containing such information as shall be required by the livestock commission, and shall be accompanied by the fee above described. If the livestock commission does not issue a license or renewal, the fee must be returned to the applicant.

"Section 4. Bond. No license or renewal of license to establish and operate a livestock market within the State of Montana shall be issued until the applicant shall have executed to the State of Montana, a bond in the penal sum of ten thousand dollars (\$10,000.00)

"Section 16. Repeal. All acts and parts of acts in conflict with the provisions of this act are hereby repealed."

The auctioneer is in no way aided by any one of the five exceptions set out in subdivision (b) of Section 2 above.

The construction to be placed upon the provisions of Chapter 52, quoted here, is that any person wishing to operate a "livestock market," as therein defined, must first qualify by making a written statement to the livestock commission of Montana, showing his financial responsibility and his ownership or control of adequate facilities for the care, sorting,

feeding, loading, unloading and shipment of livestock for the operation of a "livestock market;" and he must pay the required license fee of one hundred dollars and execute to the State of Montana a bond in the penal sum of ten thousand dollars. Any person operating a "livestock market" in the State of Montana without first securing a license from the livestock commission is guilty of a penal offense and subject to the penalty prescribed in Section 14 of the act. It is well to note anyone wishing to operate a "livestock market" must first qualify under the law. Otherwise a license to him will not be issued and he cannot, under any circumstances, operate a "livestock market" without a license so to do.

We are now confronted with the following questions:

Is an auctioneer conducting a "livestock market," as defined in subdivision (b) of Section 2, Chapter 52, Laws of 1937, when he sells at public or private sale livestock assembled at his fixed place of business for sale?

Are the legislative enactments so much in conflict as to render it impossible for both to stand?

Both questions must be answered in the affirmative, because the auctioneer authorized to sell livestock under the provisions of an earlier act is selling livestock at his fixed place of business without first having complied with the provisions of a later conflicting statute which requires him to qualify by filing with the livestock commission of Montana a written statement as to his financial responsibility and of his ownership or control of adequate facilities for the care, sorting, feeding, loading, unloading, and shipment of livestock for the operation of a "livestock market" and tendering the fee and furnishing bond prescribed therein.

Webster's International Dictionary defines the word "assemble" as: "to collect into one place or body; convoke; congregate; etc."

The statutes being in conflict, we are therefore called upon to reconcile them and in so doing we bring the following decisions of our Supreme Court to your attention:

"A later statute repeals an earlier one, if inconsistent therewith."
Territory v. Gilbert, 1 Mont. 371.

"A statute repeals by implication all existing statutes plainly inconsistent therewith."

State v. District Court of Second Judicial District, 41 Mont. 357, 109 Pac. 438.

"If one statute conflicts with a portion of another, so as to exhibit an inconsistency, the inconsistent portion of the previous statute cannot stand, and is said to be repealed by implication."

State v. District Court of Ninth Judicial Dist., Gallatin County, 56 Mont. 464, 185 Pac. 157.

"Repeals by implication are not favored, but when two legislative enactments relating to the same subject matter are in conflict, and cannot be harmonized, the act last enacted controls."

State v. Miller, 69 Mont. 1, 220 Pac. 97.

"Prior statute cannot stand if provisions of later acts are irreconcilably repugnant, or Legislature clearly intended later act should be only law on subject."

Nichols v. School District No. 3, Ravalli County, 87 Mont. 181, 287 Pac. 624.

"An act on the same subject as an earlier act, complete in itself and which contains a repealing clause to the effect that all acts and

parts of acts inconsistent with its provisions are thereby repealed, repeals the earlier act, which conflicts therewith."

Stetson-Post Mill Co. v. Brown, 21 Wash. 619, 59 Pac. 507, 75 A. L. R. 862, 25 R. C. L. 912.

"Repealed statutes are ineffective to same extent as though they had never existed."

City of Bozeman v. Merrill, 81 Mont. 19, 261 Pac. 876.

From the foregoing we are constrained to hold the pertinent sections of Chapter 320 must give way to those of Chapter 52 which are inconsistent therewith.

While not necessarily in point, it was held in Opinion No. 24, Volume 18, page 26:

"Livestock sales on Saturday afternoons, lasting about four hours, totalling about \$250 a week for livestock sold on consignment, constitutes a livestock market within the meaning of Chapter 52, Laws of 1937."

And finally, it might be well to add that the law requiring the bonding and licensing of livestock markets in Montana was, we think, enacted to prevent the establishment of markets of any kind throughout the State of Montana without the permission of the livestock commission so that such markets as might be established could be supervised and controlled by this department to prevent the sale of stolen or mortgaged livestock. If the market at Hamilton is allowed to operate in violation of this law, there is nothing to prevent the spread of such activities over the entire state. I believe you will understand the serious condition this would create and the danger the stock growers of the state would have to confront if unlicensed and unregulated markets were allowed to operate at will.

Therefore it is my opinion an auctioneer operating a general salesyard, where, among other things, he sells livestock, is required to qualify under the provisions of Chapter 52, Laws of 1937, by filing with the livestock commission of Montana a written statement as to his financial responsibility and of his ownership or control of adequate facilities for the care, sorting, feeding, loading, unloading, and shipment of livestock for the operation of a livestock market and tendering the fee and furnishing the bond prescribed therein. He cannot operate a livestock market without first obtaining a license so to do.

Sincerely yours,

JOHN W. BONNER
Attorney General