

No. 287

**LIVESTOCK COMMISSION—LIVESTOCK MARKET
BOND—BONDS**

Held: The Livestock Commission of the State of Montana is not authorized by law to insert the following clause in the livestock market bond used by said Commission:

“Any person damaged by the breach of any condition hereof may maintain an action on this bond in his own name to recover his damages, after first giving written notice to the trustee herein, or the trustee herein may maintain an action in his own name, the recovery to be made for the use of the persons damaged, and both Principal and Surety herein hereby waive every defense, if any there might be, based upon the fact that any person damaged or in whose name the suit shall be brought is not party or privy to this bond.”

November 10, 1941.

Mr. Paul Raftery, Secretary
Livestock Commission
Helena, Montana

Dear Mr. Raftery:

Recently you wrote to this office in part as follows:

“Enclosed is a letter received from Paul McCormick, Jr., District Supervisor, Packers and Stockyards Division of the United States Department of Agriculture, concerning the insertion of a paragraph in the form of bond used at the present time by this department in connection with Chapter 52 of the Session Laws of 1937.

“I am enclosing a copy of our bond and also a copy of Chapter 52. Will you kindly advise us whether or not the paragraph quoted in Mr. McCormick’s letter could be inserted in the form of bond we are using?”

Mr. McCormick’s letter, which you enclosed and which is returned herewith, reads in part as follows:

“You will recall our having discussed, in Idaho Falls, the question of adding the following clause to the Montana State bond, and I am wondering if this matter has been discussed with the Attorney General’s office and any decision arrived at:

“‘Any person damaged by the breach of any condition hereof may maintain an action on this bond in his own name to recover his damages, after first giving written notice to the trustee herein, or the trustee herein may maintain an action in his own name, the recovery to be made for the use of the persons damaged, and both Principal and Surety herein hereby waive every defense, if any there might be, based upon the fact that any person damaged or in whose name the suit shall be brought is not party or privy to this bond.’”

The portion of Chapter 52 of the Session Laws of 1937 which governs this case is Section 4, which reads as follows:

“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), upon a form prescribed by the livestock commission, with surety to be approved by the commission, conditioned upon the payment of all money received, less reasonable expenses and agreed commissions by the licensee and operator of such livestock market to the rightful

owner or owners of livestock so consigned and delivered to such licensee for sale forthwith upon the sale of such livestock, and also a full compliance with all of the terms and requirements of this act, and the acceptance and approval of said bond by the livestock commission, and the approval thereof as to form by the attorney general of Montana. When so approved said bond shall be filed with the secretary of the livestock commission. Actions of law may be brought in the name of the state upon any such bond for the use and benefit of any person who may suffer loss or damage from violations thereof, and may be brought by any such person suffering loss or damage in the county of his residence. Copies of any such licenses and bond certified by the secretary of the livestock commission may be procured upon payment of the fee of one dollar (\$1.00) each and shall be received as competent evidence in any court of the State of Montana."

A careful reading of that section discloses provision is made for the bringing of legal actions. Such actions may be brought in the name of the state upon the bond for the use and benefit of any person who may suffer loss or damage from violations thereof, or it may be brought by any such person suffering loss or damage in the county of his residence. The clause which is proposed by Mr. McCormick would impose greater rights upon a person damaged and greater liability upon the bondsmen than is contemplated by the statute. It is a fundamental rule of law no one except the legislature can change or alter the law which has previously been made by that body.

Consequently I am of the opinion there is no authority in the law of this state which would allow the insertion of the suggested clause in the livestock market bond which is now in use by your office.

Sincerely yours,

JOHN W. BONNER
Attorney General