

No. 459

**LIVESTOCK MARKET—SURETY BONDS—
CASH BONDS**

Held: A person operating a livestock market must furnish a surety bond under the provisions of Section 4, Chapter 52, of the Laws of 1937. A cash bond is not satisfactory.

July 31, 1942.

Mr. Paul Raftery
Secretary
Livestock Commission
State Capitol
Helena, Montana

Dear Mr. Raftery:

You have asked the opinion of this office as to whether or not a person who operates a livestock market may furnish a cash bond in the sum of ten thousand dollars (\$10,000.00) in lieu of a surety bond in like amount, as required by Section 4 of Chapter 52, Laws of 1937.

In answering this question the provisions of Section 4 of Chapter 52, Laws of 1937, should be considered:

“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 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 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." (Emphasis mine.)

It is to be observed there is no exception in the above quoted portion of Chapter 52 which would permit the furnishing of a cash bond.

A helpful rule of construction was announced by the Supreme Court of Montana in the case of Vaughn and Ragsdale Co., Inc., v. State Board of Equalization, et al., 109 Mont. 52, 96 Pac. (2nd) 420, wherein the court said:

"This court has the power to declare a legislative Act invalid, but it has no power to correct or amend an Act, or even construe it when expressed in plain and unambiguous language. 'The courts must declare the law as they find it.' (Putnam v. Putnam, 86 Mont. 135, 282 Pac. 855, 860, and cases cited.) 'In the construction of a statute or instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted.' "

Applying the above rule of construction to Section 4, Chapter 52, Laws of 1937, I am unable to overcome the express words of the statute, which, by its terms, specifies the giving of a surety bond.

Section 9831 of the Revised Codes of Montana, 1935, provides:

"In all cases where an undertaking or bond with sureties is required by the provisions of this code, the plaintiff or defendant may deposit with the clerk of the court or justice of the peace or police Judge, as the case may be, a sum of money equal to the amount required by the undertaking or bond, which shall be taken as security in the place thereof."

This section would permit the substitution of a cash bond in matters before the court and is limited to bonds incidental to court proceedings.

I am of the opinion, therefore, the provisions of Section 4 of Chapter 52, Laws of 1937, are mandatory and the only bonds which can be furnished by a person operating a livestock market is a surety bond, upon a form prescribed by the livestock commission and the surety of which must be approved by the commission.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General