

Opinion No. 183.

Horse Herd Districts—
Herd Districts.

Held: A person who is the owner, or entitled to the possession of a horse, who wilfully permits the same to run at large within a horse herd district, may not be prosecuted under the provisions of Chapter 165, Laws of 1945.

July 27, 1946.

Mr. Homer A. Hoover
County Attorney
McCone County
Circle, Montana

Dear Mr. Hoover.

You have requested an opinion from this office as to whether a person who is the owner, or entitled to the possession of a horse, and who wilfully permits the same to run at large within a horse herd district organized under the provisions of Section 3389.2, Revised Codes of Montana, 1935, may be prosecuted under the provisions of Section 3385, Revised Codes of Montana, 1935, as amended by Chapter 165, Laws of 1945.

It is to be noted that Chapter 165, Laws of 1945, specifically amends Section 3385, Revised Codes of Montana, 1935, by increasing the fine for trespassing animals, but otherwise it is no more inclusive than the original Section 3385. Said Section 3385 is a general statute pertaining to herd districts and seemingly refers to ordinary herd districts.

Sections 3389.2 to Section 3389.8, inclusive, were enacted in 1931, and specifically pertain to horse herd districts. Section 3389.4 specifically provides the punishment to be dealt the owner or person in charge of horses which **wrongfully enter** upon premises in such districts by stating that such owner or person charged shall be punished in accordance with the provisions of Section 3389.

Section 3389 in itself does not pertain to the owner or person in charge of the property. However, the reference made in Section 3389.4 to Section 3389 is to the punishment designated by said Section 3389 and not to the parties.

In view of the fact Sections 3389.2 to Section 3389.8, inclusive, Revised Codes of Montana, 1935, make a differentia-

tion between horse herd districts and other herd districts, and specifically provide the punishment for allowing horses to run at large upon premises within such horse herd districts, it is my opinion a person who is the owner, or entitled to the possession of a horse, who wilfully permits the same to run at large within a horse herd district, may not be prosecuted under the provisions of Chapter 165, Laws of 1945.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General