

Dear Mr. Raftery:

You have submitted the following question to this office and requested an opinion thereon:

Does Chapter 176, Laws of 1945, require the inspection of livestock before removal from one county to another in cases where such cattle are being sold or disposed of by the owner?

Opinion No. 96.

**Livestock—Inspection, of Livestock—
Removal of Livestock—Brands.**

Held: Chapter 176, Laws of 1945, requires the inspection of livestock before removal from one county to another in cases where such cattle are being sold or disposed of by the owner, with the exceptions contained in subdivisions (a) and (b) of Section 1 of Chapter 176, and so much of subdivision (c) as pertains to movement by the owner for the purpose of pasturing, feeding or changing the range thereof. The further exception in subdivision (c) which provides for movement from one county to the next adjoining county within the State of Montana when such animal is used **"IN THE ORDINARY CONDUCT OF HIS BUSINESS"** must be construed as meaning when livestock is utilized by the owner or his agent as transportation or motive power, such as for contracting, drayage, or general hauling, or when hauled in truck or trailer by governmental agencies, and not to include that construction which would enable the owner "in the ordinary conduct of his business" to drive cattle from one county to the next adjoining county where such cattle are to be sold or disposed of by the owner.

November 21, 1945.

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

Section 1 of Chapter 176, Laws of 1945, states in part as follows:

"Except as in this act otherwise provided, it shall be unlawful to remove or cause to be removed from any county in this state any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly, by means of any railroad car, motor vehicle, trailer, horse-drawn vehicle, boat or in any manner whatsoever unless such animal shall have been inspected for brands by a state stock inspector or deputy state stock inspector and certificate of such inspection shall have been issued in connection with and for the purpose of such transportation or removal as in this act provided. Such inspection must be made in daylight . . .

"The provisions of Section 1 of this act shall not apply (a) to any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly being transported through the state in interstate commerce without leaving the custody of the carrier; (b) to any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly transported by railroad consigned to and which, without leaving the custody of the carrier, does reach a market at which the livestock commission of the State of Montana regularly maintains a stock inspector, and for which animal a loading tally has been filed by the shipper with the carrier as provided in Section 3341 of the Revised Codes of Montana of 1935; (c) to any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly when driven on the hoof and not moved by means of any motor vehicle, trailer, horse-drawn vehicle, railroad car or boat, by the owner from one county to the next adjoining county within the State of Montana on to land owned or controlled

by the owner of livestock so moved for the purpose of pasturing, feeding or changing the range thereof, nor to any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly when driven on the hoof and not moved by means of any motor vehicle, trailer, horsedrawn vehicle, railroad car or boat, from one county to the next adjoining county within the State of Montana by the owner thereof or his agent when such animal is used in the **ordinary conduct of his business** and such person has been the owner of said animal to be removed for at least three (3) months . . ." (Emphasis mine.)

It is to be noted that the last quoted provision of Section 1 of Chapter 176 provides three cases of exceptions to the inspection of livestock before removal from any county. Subdivisions (a) and (b) are explicit and definite in their provisions. Subdivision (c), insofar as it pertains to the exception of movement for pasturage to the inspection law, is clear and definite. However, that portion of subdivision (c) which states that no inspection is necessary when cattle driven on the hoof from one county to the next adjoining county within the State of Montana by the owner thereof, or his agent, when such animal is used in the **ordinary conduct of his business** and such person has been the owner of said animal to be removed for at least three months, is open to discussion.

The question then arises as to the construction to be placed upon the phrase "in the ordinary conduct of his business" so as to define clearly what is meant by this phrase, and to specify what constitutes the exception to the inspection laws as referred to.

The following language was contained in Opinion No. 510, Volume 19, Report and Official Opinions of the Attorney General, which was based on Section 3324, Revised Codes of Montana, 1935, as amended by Chapter 106, Laws of 1941. The same exceptions as utilized in the act under discussion were contained in the laws on which this opinion was based:

"It is obvious the legislative intention has been directed toward the inclusion of all livestock within the section's inspection provisions, except those driven from one county to an-

other for pasturage and similar purposes, and those driven in the **ordinary conduct of business, such as teams of draft animals.**" (Emphasis mine.)

In the case of *State v. Board of Commissioners of Cascade County*, 89 Mont. 37, 296 Pac. 1, the following language was used:

"Court in construing statute must ascertain legislative intention from consideration of act as a whole and not from wording of any particular section."

Along similar lines of construction, the court in *Ex Parte Lockhart*, 72 Mont. 136, 232 Pac. 182, stated:

"Particular meaning to be given a word in any given instance must be determined from the context and general purpose of provision in which it is found."

Again in the case of *Young v. Board of Trustees of Pondera County High School*, 90 Mont. 576, 4 Pac. (2d) 725, the court said:

"Meaning of terms must be measured by context."

The court in *State v. State Board of Equalization*, 93 Mont. 19, 17 Pac. (2d) 68, stated:

"In case of doubt as to meaning of term in statute, the history of statute may be considered."

Chapter 131, Laws of 1915, was "An act to protect the owner of cattle and to cause the inspection of the same before their removal from one county to another within the State of Montana." The phrase "in the usual and ordinary conduct of their business" was also contained in this early act. The history of this act has been that the phrase in question in this instance, "in the usual and ordinary conduct of their business" has been included in all laws and amendments thereto pertaining to the inspection of cattle prior to their movement from one county to another within the State of Montana.

The obvious purpose of all acts and amendments pertaining to the inspection of livestock brands has been to protect the ownership of livestock, and any interpretation rendered on such

laws or acts must be rendered in view of legislative intention and the history of such laws, keeping in mind at all times that a presumption exists against construction of a statute rendering it ineffective or which would cause grave public injury.

Construction of "in the ordinary conduct of his business" measured by the whole context of the act in which it is included so as to make it harmonious and sensible must be limited to business, such as contracting, drayage or general hauling, or in a like manner, when livestock is utilized as a manner or means of transportation. If it were to be said that the "ordinary conduct of his business" were to include any ordinary business in which a cattleman might engage, including the movement of his cattle from one county to the next adjoining county within the State of Montana where such cattle are to be sold or disposed of, the net result would be to invalidate the entire act. The court in School District No. 18 of Pondera County v. Pondera County, 89 Mont. 342, 297 Pac. 498, stated:

"Presumption exists against the construction of statute rendering it inactive, or which would cause grave public injury."

Again in the case of Murray Hospital v. Angove, 92 Mont. 101, 10 Pac. (2d) 577, the court said:

"Practical interpretation of ambiguous statute by executive department if acted on for a number of years will not be disturbed, except for very cogent reasons."

The Montana Livestock Commission and its agents entrusted with the administration of the act have for over 25 years enforced the inspection regulations on movements of livestock from one county to the next adjoining county, and have, with respect to "in the ordinary conduct of his business," enforced such restricted meaning, and have only allowed exceptions under this particular provision when the livestock in question were being used as a means of transportation or motive power for the owner, or his agent, in the pursuit of his business activities.

It can readily be seen that any other interpretation of the phrase "in the ordinary conduct of his business" would lead to the nullification of the

purpose of the inspection act, and that as a result thereof, no protection would be given to livestock owners as regards inspection.

It is therefore my opinion that Chapter 176, Laws of 1945, requires the inspection of livestock before removal from one county to another in cases where such cattle are being sold or disposed of by the owner, with the exceptions contained in subdivisions (a) and (b) of Section 1 of Chapter 176, and so much of subdivision (c) as pertains to movement by the owner for the purpose of pasturing, feeding or changing the range thereof. The further exception in subdivision (c) which provides for movement from one county to the next adjoining county within the State of Montana when such animal is used "in the ordinary conduct of his business" must be construed as meaning when livestock is utilized by the owner or his agent as transportation or motive power, such as for contracting, drayage, or general hauling, or when hauled in truck or trailer by governmental agencies, and not to include that construction which would enable the owner "in the ordinary conduct of his business" to drive cattle from one county to the next adjoining county where such cattle are to be sold or disposed of by the owner.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General