

Opinion No. 26.

Venue—Crimes Committed on Boundaries—Counties—Transportation of Cattle.

HELD: The county from which livestock are removed without being inspected is the county in which the proper venue lies for filing a misdemeanor charge under the provisions of Section 46-801, R. C. M., 1947.

June 10, 1953.

Mr. Leo H. Murphy
County Attorney
Teton County
Choteau, Montana

Dear Mr. Murphy:

You have submitted the following to my office:

“In connection with the filing of a complaint by a livestock inspector for failure to have inspection of livestock before transporting the livestock across county lines under Section 46-801, R. C. M., 1947, the following question has arisen:

"Should the complaint be filed in the county from which the livestock are transported or in the county into which the livestock are transported?"

This question must be answered in a manner that gives application to Section 16 Article III of the Constitution of the State of Montana. This section provides:

"In all criminal prosecutions the accused shall have the right to . . . a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same."

The spirit of Section 16, Article III, supra, has been considered by our Supreme Court in the case of State v. O'Brien, 35 Mont. 482, 495, 90 Pac. 514, wherein the court stated:

"The design of this provision of the Constitution is to furnish a guaranty to every person charged with a crime of a trial by a jury from the vicinage or neighborhood where the crime is supposed to have been committed, so that he may have the benefit, on his trial, of his own good character and standing with his neighbors, if these he has preserved, and also of such knowledge as the jury may possess of the witnesses who may give evidence against him. . . . This guaranty is made good to him if he enjoys these rights. . . ."

Further, reference is made to Section 46-801 R. C. M., 1947, as amended by Chapter 110, Laws of 1949, which provides in part:

"Inspection of Livestock Before Removal From County. (1) 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.

* * * ." (Emphasis supplied.)

In analyzing the above statute it is clear that the essence of the offense is the removal of livestock from a county without inspection and when such act occurs it becomes obvious that the crime is instituted and completed in the county from which the cattle or livestock are removed.

This does no violence to the interpretation of Section 16, Article III of the Constitution of the State of Montana, as interpreted by State v. O'Brien, supra, and it is therefore my opinion that the county from which the livestock are removed without inspection is the county in which the proper venue lies for filing a misdemeanor charge under the provisions of Section 46-801, R. C. M., 1947.