

animals, as listed in said section, are transported out of a county under a market consignment permit, but when such permit does not describe a particular animal so transported, or when there is an incorrect listing of the said livestock.

Section 46-801, R.C.M., 1947, reads in pertinent part as follows:

"(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."

Subdivisions 2, 3 and 4, make further provision for the non-removal or sale, without inspections, of such animals. Subdivision 5 of the same section sets up exceptions to this requirement.

By Chapter 184 of the Montana Session Laws of 1953, this section was amended in subdivisions 2 and 4 to provide for the transportation under a market consignment permit. Subdivision 1 remained unamended. The remaining subdivisions were renumbered and the exceptions to the application of section 1 became subdivision 6, two additional exceptions were added.

Exception (f) reads:

"(f) to any such animal or animals from one (1) county to be consigned to, and which actually reach by means other than railroad a licensed livestock market located in another county of the state at which the livestock commission of the state of Montana regularly maintains a stock inspector, and for which a market consignment permit has been obtained in the manner provided by law."

#### Opinion No. 69

#### Livestock — Inspections — Market Consignment Permits — Criminal Law

HELD: The removal of cattle from a county without first having had any of the removed animals inspected, or without first having obtained a market consignment permit listing any such animal is a misdemeanor and violation of Section 46-801, and 46-806, R.C.M., 1947, as amended.

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Mr. William G. Cheney  
Executive Officer  
Montana Livestock Commission  
State Capitol  
Helena, Montana

Dear Mr. Cheney:

You have requested my opinion as to whether or not there is a violation of Section 46-801, R.C.M., 1947, as amended, when any animal or

Section 46-802, R.C.M., 1947, was also amended by Chapter 184, and there was added to that section a provision setting forth the procedures for obtaining a market consignment permit. In this amendment it should be noted that the language applied to such animal or animals and requires that the consignment permit specify the date and time issued, the place of origin and the place of destination of the shipment, the name and address of the owner of the animal or animals and the name and address of the person actually transporting the animal or animals, if different than the owner, the kind of animal or animals, the marks and brands, if any, upon the animal or animals, etc.

Additionally, Section 4 of Chapter 184, provides penalties for violation of the act. Subdivision (a) of Section 46-806 was amended to read:

"(a) Any person who removes or causes to be removed from any county in the state any animal or animals of the class referred to in section 46-801; (1) without having the same inspected prior to removal where such inspection is required by law; (2) without obtaining a market consignment permit for such animal or animals, where such market consignment permit is obtainable by law; (3) and does obtain a market consignment permit for such animal or animals but does not deliver such animal or animals transported thereunder to the livestock market designated in the market consignment permit; shall be guilty of a misdemeanor and shall be punishable as hereinafter provided."

Subdivision (d) also makes it a crime to fail to have in possession of the person in charge of removing any animal or animals from any county, the inspection certificate or market consignment permit as issued for such animal or animals, or who fails to exhibit said certificate or permit is guilty of a misdemeanor. Subdivision (e) provides in general:

"(e) Any person violating any of the provisions of this act in respect to moving, removing or transporting any animal or animals of the class referred to in section 46-801,

or in any other particular, shall be guilty of a misdemeanor and shall be punishable as hereinafter provided."

As originally written this section forbade the removal from a county without an inspection first having been obtained.

In 1953 the market consignment provisions were added to the section and there was also added the additional penalty provision found in Chapter 184, of Section 4, Laws of 1953. It is clear that the market consignment permit was intended to allow for the removal from a county of livestock without an inspection having first been obtained so long as the livestock were to be delivered to a licensed livestock market in another county of the state and so long as the permit was delivered to the inspector at the livestock market. The market consignment permit is not a substitute, therefore, for inspection itself. It merely permits the cattle to be removed from a county by truck for delivery to a licensed market where an inspection may be had. It establishes an exception to the blanket prohibition against the removal of animals from a county without inspection.

A reading of the language of the amended statute makes it clear that the permit is intended to apply to individually described animal. It is also clear that the statute prohibiting removal applies to individual animals. Thus, if a man obtained a permit for one animal of a certain description and removed an entirely different animal, obviously the removal is in violation of the law. Since 1953 it is a violation not only of Section 46-801, supra, but it comes within the provisions of Section 46-806, as amended.

Since the market consignment permit is an exception to the statute which requires inspection prior to removal, it is incumbent upon the person upon whom the law places the duty of obtaining inspection to bring himself within that exception.

A mistake in description in the permit as required by Section 2 of Chapter 184, (amending Section 46-802, R.C.M. 1947) is therefore the responsibility of the person whose

duty it is to have procured inspection prior to removal or whose duty it is to bring himself within the exception to the inspection law. Whether or not the mistake in description or the failure to describe is intended as an avoidance of the inspection law or is merely an oversight on the part of the person whose duty it is to furnish said description may go in mitigation of the criminal penalty, but it is not a bar to prosecution.

It is therefore my opinion that the removal of any animal of the class referred to in Section 46-801, R.C.M., 1947, from a county without first having such animal inspected, or without first having obtained a shipping permit for such animal, is a misdemeanor and a violation of Section 46-801, as amended, and comes within the penalties of Section 46-806, as amended.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General.