

Opinion No. 60-226

December 14, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Fred M. Standley Special Assistant Attorney General Legal Section State Highway Department Santa Fe, New Mexico

QUESTION

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Do the judgment, stipulation, and order entered in the case of State Highway Commission v. Kipp, Cause No. 14553, District Court of Grant County, and the proper resolution of the Highway Commission (copies attached), together with the State's Police Power accomplish controlled access for this Highway; and does the resolution and police power prevent driving cattle across and on the controlled access highway?

CONCLUSION

Yes.

OPINION

{*650} ANALYSIS

The answer to your question as regards the judgment, stipulation and order in the Kipp case requires an examination of these documents. The stipulation entered into by counsel for the highway commission and the defendant Kipp, provides in substance, that a certain sum of money will be paid by the state to the defendant for repreciation of her ranch property together with any loss in the value of the defendant's cattle due to the inability of the defendant to drive her cattle across the controlled access highway.

The judgment entered in the cause on the 18th of September, 1958 orders that all of the land and property rights sought in the highway commission petition be confirmed in the State of New Mexico for the purposes required, among which is as follows:

"Together with all access rights to said highway as shown upon Exhibit A attached hereto, from said defendants land abutting thereon and adjoining and including access from defendants remaining property abutting the above described strip taken which shall become part of said highway. Except that access should be permitted to the travelling lanes of U. S. Highway 80 from the interchange at Station 435 plus 25."

The order entered in the cause denies damages to the defendant for loss of the right to drive directly across the highway.

Considering these three documents, we are of the opinion that they vest complete right to the control of the land in question in the State of New Mexico. While the order in the cause is not clear and might tend to imply that the Defendant still has access to the highway, we feel that this is properly explained as a statement by the court that she still has a means of driving her cattle to the shipping pens.

We turn our attention now to Section 64-18-20 and 64-14-22, N.M.S.A., 1953 Comp., Section 64-18-20, specifically grants to the State Highway Commission the right, by resolution, to prohibit use of controlled access highways by:

"pedestrians, bicycles, or other non-motorized traffic . . ."

{*651} Section 64-14-22, defines traffic as follows:

"Pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using any highway for purposes of travel."

We see, then, that the highway commission has the power to prohibit ridden or herded animals on controlled access highways by a duly passed resolution. The sole question remaining for our consideration is whether this statute is a valid exercise of the States' Police Power.

It is elementary law that a state may regulate certain activities so as to promote order, safety, health, morals, and the general welfare of society so long as the means used have a substantial relation to the purposes to be accomplished, **Graham v. Kingwell** 218 Cal. 658 24 P. 2nd 488; **Brink v. Callaham** 297 U.S. 251 80 Led. 1008, 56 S. Ct. 496; **Lincoln Federal Labor Union v. North Western I & M Co.**, 149 Neb. 507 31 NW 477, affirmed 335 U.S. 525 **People ex rel., Greening v. Bartholf** 388 Ill., 445 48 NE 2d 172; **Bowman v. Kansas City** 361, 14 233 SW 2d 26.

With this consideration in mind, we are of the opinion that the legislature's enactment of Section 64-18-20, supra., was a proper exercise of the state's police power and, further was a proper delegation thereof. It certainly cannot be controverted that the regulation of animals on public highways is necessary to promote the public safety especially in this day of heavy automobile traffic and, high highway traffic death tolls.

We are of the opinion, therefore, that the determination of the cause hereinunder consideration vested complete control over and right to the lands in question, in the State of New Mexico and further that the State Highway Commission has the power, by duly passed resolution, to prohibit animals from passing across, along, over or through the right-of-way of a public controlled access highway within the state.

By: Boston E. Witt

Assistant Attorney General