

Opinion No. 64-113

September 3, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General James V. Noble, Assistant Attorney General

TO: New Mexico State Corporation, New Mexico State Capitol Building, Santa Fe, New Mexico

QUESTION

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Does the transportation of race horses come within the definition of "livestock" within the definition of Section 64-27-80, N.M.S.A., 1953 Compilation so as to bring such transportation under the provisions of this Section?

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 64-27-80, N.M.S.A., 1953 Compilation in substance provides that farm-livestock carriers as therein defined, may obtain certificates of registration, for such operations **only**, upon application and without hearing.

Subsection (a) of the section provides the applicable definition and states that the term "**farm livestock carrier**" shall mean any carrier for hire of livestock, farm produce, feed, farm equipment and agricultural supplies. The language discloses that the exemption shall apply if the carrier transports **one or more** of such enumerated items -- i.e. livestock or farm produce or feed or farm equipment or agricultural supplies.

If, therefore, a horse falls within the definition of "livestock" and the use to which the horse is then being put -- i.e. "racing", does not remove it from such definition, then the answer must be in the affirmative.

In the case of **Van Clief v. Comptroller of State of Maryland**, 211 Md. 191, 126 A 2d 865, 867, the court commented on a similar argument made before a Circuit Court in a different case where it was argued that the sale of flowers, decorative shrubs, Christmas trees, etc., did not constitute agricultural products and should not be exempted from the Maryland Sales Tax. The Court commented favorably on the opinion of the trial judge in which he held that if the use of agricultural products entered into the

question of taxability it would result in hopeless confusion. The court then pointed out that many farm products are often raised for purposes entirely unconnected with food -- i.e. tobacco.

Similarly if we here attempted to differentiate between horses **used** for racing purposes, or plowing, or feeding, or transportation of dudes, or for the enjoyment of children or visiting grandchildren, we similarly reach a state of utter confusion. Such confusion is compounded when we realize that the same horse might, and often is, put to a variety of uses during its lifetime or even in a single year. If a classification be required based upon use or intended use of the animal, such uncertainty and vagueness would result as to raise a serious question as to the constitutionality of such law or as to preclude its effective operation. It is therefore necessary to determine whether or not a horse is "livestock" and if so whether the transportation of horses comes within the definition of Section 64-27-80, *supra*, without regard to the particular use to which the particular horse or group of horses is or are being put to at the precise moment.

The definition of "livestock" is given in **Websters New International Dictionary**, Second Edition as follows:

"Domestic animals used or raised on a farm, especially those kept for profit."

The definition of livestock universally includes the species of animals known generically as "horses." See 25A **Words and Phrases**, P. 45 et seq. Our legislature has defined the word "livestock" in several instances as including horses. See Sections 47-2-19, 47-4-1, et seq., 47-9-38, et seq., 47-10-1, et seq., 47-13-6, et seq., 47-17-2, et seq., all in N.M.S.A., 1953 Compilation and 47-17-18.

Our statute differs from the U.S. Interstate Commerce Act. (Title 49 N.S.C.A.). Section 303 (b) (c) of Title 49 specifically excepts vehicles transporting "**ordinary** livestock." This language was construed in the case of **In Oswley Application**, 31 M CC 778, Interstate Commerce Commission reports Oct. 1941-Jan. 1942. The Interstate Commerce Commission construed the language "**ordinary** livestock" and held that a race horse did not come within that definition and the transportation of such horses was not excepted from the provisions of that act. Yet another decision, **In Morgan Application**, 82 M.C.C., 116, Interstate Commerce Commission Reports, Nov. 1959 - May 1960, involved an application for a permit to transport "horses other than **ordinary**" under the provisions of Title 49, *supra*. It was assumed by the commission, without discussion, and apparently without the point being raised under the questions presented, that a race horse was not "**ordinary** livestock." It therefore appears that the word "ordinary" was properly given meaning in construing the statutory language and to show that there was, in the minds of the Congress, some livestock which would not be ordinary. The commission in determining this intention necessarily held that this language would exclude race horses as being "other than ordinary" and therefore subject the carrier of such to regulation under the Act. Our statute contains no such distinguishing language and would purport to exempt all livestock and not just "ordinary" livestock.

The question was raised in the case of **Van Clief v. Comptroller of State of Maryland**, supra, as to whether a brood mare and former race horse was "livestock" within the definition of "livestock" so as to be exempt from sales tax upon sale. The Court specifically held that such a horse did come within the definition of "livestock" and that the appellants were entitled to the exemption. The brood mare in question apparently was kept for the primary purpose of raising colts for racing purposes. The Court determined that the mare was "livestock" and exempt.

In view of the language employed in Section 64-27-80, supra, it is our opinion that a race horse does come within the definition of livestock and that haulers thereof do come within the provisions and requirements of that section. In so holding Opinion No. 63-21, as yet unpublished, is not overlooked and has been carefully considered but, as it reaches a different conclusion, is hereby expressly overruled.