

## **Opinion No. 66-127**

December 1, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General George Richard Schmitt,  
Assistant Attorney General

**TO:** Mr. Fred Owensby, Assistant Director, Cattle Sanitary Board, P. O. Box 204B,  
Albuquerque, New Mexico

### **QUESTION**

#### **FACTS**

Presently, under the Cattle Sanitary Board's existing rules, a rancher wishing to sell his cattle to an authorized sales ring within the state is likely to be subjected to double inspection fees. This occurs when a rancher moves cattle out of his cattle district to another district where a sales ring is located. He is required before moving the cattle to have them inspected. Another inspection is required prior to the sale of the cattle at the sales ring. The Board is desirous of eliminating not only these double inspection fees but also much of the extra work required of their inspectors. This might be accomplished under a Board proposal which would eliminate the inspection of cattle before they are transported to the sales ring by the rancher. The transportation of the cattle is to be authorized by the Board through the issuance of a proposed livestock hauling permit which will be given to the rancher upon application to the Board. The permit requires the rancher to swear that he is in legal possession of the cattle being transported and to further attest that such cattle are free from contagious disease. This permit acts as Board authorization for the rancher to ship the cattle to the sales ring.

#### **QUESTION**

Under existing laws, must cattle be inspected by the Cattle Sanitary Board before they are transported for sale within the state?

#### **CONCLUSION**

Yes.

### **OPINION**

#### **{\*170} ANALYSIS**

As desirable as your proposal outlined above might be, it cannot be validly carried out under the law as is set forth below:

47-9-34. Exportation of cattle -- Receiving for shipment without inspection unlawful. -- It shall be unlawful for any person, firm or corporation to offer, and for any railroad company or other common carrier to receive for purpose of shipment and transportation from points within to other points within or beyond the limits of the state, any herd, band or consignment of cattle unless the same shall have been duly inspected by a duly authorized inspector and a certificate of such inspection issued by such inspector as required by the laws of this state.

47-9-38. Transportation of horses, mules, asses, cattle, sheep or goats or carcasses thereof -- Inspection certificate. -- It shall be unlawful for any person or persons, firm or corporation to transport, within the state of New Mexico or from the state to any point beyond the limits thereof, any horses, mules, asses, **cattle**, sheep or goats or the carcasses thereof, in any motor or other vehicle or conveyance, **unless such animal or animals, or carcasses, shall first have been inspected by an inspector** thereunto duly authorized by the sheep sanitary board or the **cattle sanitary board**, as the case may be, and unless, upon satisfactory showing of the ownership of said animals or carcasses, said inspector shall have issued inspection certificate in the form to be prescribed by the sheep sanitary board or the cattle sanitary board, as the case may be, and unless such certificate shall at all times accompany the animal or animals or carcasses so being transported in such motor or other vehicle; Provided, however, that no inspection shall be required where the transportation from one point to another within the state is entirely upon lands exclusively within the control of the party transporting or procuring the transporting of such animal or animals or carcasses; and, Provided further, that any inspector for the cattle sanitary board shall upon request issue an inspection certificate for certain horses, fully described, and proven ownership, to any person to transport such horses in a motor or other vehicle, within the state of New Mexico, and such person to whom such certificate is issued shall not be required to have such horses inspected each time the same are so transported, during the time such certificate shall be in force. Any such certificate may be revoked for cause.

47-9-39. Notice of intention to transport -- Date and place of inspection. -- **Before any person** or persons, firm or corporation **shall transport** said livestock or carcasses as herein set out, **such person** or persons, firm or corporation **shall notify the nearest inspector that it is desired that said livestock or carcasses be inspected**, fixing the date, place and time thereof, and giving reasonable time for said inspector so notified to reach said place on the date designated. (Emphasis supplied.)

We need not elaborate on what is so clearly set out above. A rancher must have his cattle inspected before he ships them. It makes no difference whether the shipment and sale occurs entirely within the state or not. Your proposed livestock hauling permit to be issued in lieu of the inspection does not enable you to sufficiently fulfill your duties under the law. An apparent purpose of the Legislature when enacting such rigid inspection statutes was to prevent the theft or movement of cattle not in legal possession of the shipper and the possible transportation of cattle that were not free from contagious disease, and the Legislature foresaw that the best way to accomplish this {\*171}

purpose was to mandatorily require that the cattle undergo a visual inspection before shipment.