

Opinion No. 22-3498

June 30, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. E. J. H. Roy, Roy, New Mexico.

Trespass to State Lands Committed by Live Stock.

OPINION

{*163} In reply to your letter of the 29th instant, stating that you have before you a case of a person arrested for trespassing upon state lands, the offense having been committed by reason of the defendant having permitted his cattle and horses to graze and water thereon, and asking if, under the provisions of Section 5226, Code 1915, it is necessary to show that the defendant permitted droves of cattle upon such state lands, allowing them to remain thereon without actually driving them on to such lands, I wish to advise:

Your question is not quite clear but I assume that you intend to ask if the permitting of the grazing and watering of animals upon state lands is sufficient to constitute the offense prohibited in Section 5226 without showing an overt act of driving the stock upon the land.

In my opinion, there is nothing in Section 5226 which requires evidence that the stock was driven by the defendant upon state lands. {*164} The fact that the livestock of the defendant was permitted to graze and water upon such lands without legal right would constitute an offense.