

LETTER OPINION
96-L-195

November 6, 1996

Honorable Ken Solberg
State Senator
207 Sunset Lane
Rugby, ND 58368

Dear Senator Solberg:

Thank you for your letter inquiring about the importation of livestock from foreign countries and requesting interpretation of N.D.C.C. § 36-15-21.

First, you ask whether the state veterinarian has the authority to enforce N.D.C.C. § 36-15-21 without the consent of the Board of Animal Health (Board). N.D.C.C. § 36-15-21 prohibits persons from bringing female cattle over the maximum vaccination age that have not been officially calfhood vaccinated against brucellosis into the state for dairy or breeding purposes. N.D.C.C. § 36-15-21 also provides that the Board may grant an exception to the provisions of this section and that an appeal may be taken from the decision of the Board under the provisions of chapter 28-32.

The duties of the Board and the state veterinarian are established in N.D.C.C. ch. 36-01. The duties of the Board are outlined in N.D.C.C. § 36-01-08, which provides in relevant part:

The board shall protect the health of the domestic animals and nontraditional livestock of this state, shall determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among the domestic animals and nontraditional livestock of this state, and shall prevent the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests. Any matter relating to the health and welfare of domestic animals and nontraditional livestock and not specifically assigned by statute to another entity is deemed to be within the authority of the board. The board may make rules to carry into effect the purposes of this chapter and other duties prescribed in this title.

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The duties of the state veterinarian are outlined in N.D.C.C. § 36-01-06, which provides:

The state veterinarian shall:

1. Ascertain, by personal examination or through reports from other authorized representatives or agents of the commissioner, all information which can be obtained regarding the existence of contagious, infectious, and epizootic diseases of animals.
2. Execute all orders and rules made by the board.
3. Execute all duties prescribed for the state veterinarian in title 36 and all duties and responsibilities otherwise authorized by the board that are necessary and proper in order to accomplish the business of the board of animal health and carry into effect the purposes of this title.
4. Present at the meetings of the board a detailed report of all matters connected with the work of the state veterinarian and authorized representatives of the board during the time since the last meeting.

Because the state veterinarian can only execute "orders and rules made by the board," and "duties prescribed for the state veterinarian in title 36 and all duties and responsibilities otherwise authorized by the board," the state veterinarian can only take enforcement action which the Board has authorized. N.D.C.C. ch. 36-15 consistently refers to enforcement and regulatory actions regarding bovine tuberculosis and brucellosis which are to be taken by the Board, rather than the state veterinarian. For example, N.D.C.C. § 36-15-02 authorizes the Board to determine if an animal is infected and order the animal killed, and N.D.C.C. § 36-15-22 provides the Board with enforcement authority to order cattle slaughtered or assess civil penalties for bringing cattle into the state which are not in compliance with N.D.C.C. ch. 36-15. Accordingly, it is my opinion that the state veterinarian cannot enforce the provisions of N.D.C.C. § 36-15-21 without the Board's consent.

However, N.D.C.C. § 36-01-06 authorizes the state veterinarian to execute all duties and responsibilities otherwise authorized by the Board. Therefore, the Board could promulgate rules which would authorize the state veterinarian to enforce N.D.C.C. § 36-15-21 and

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which would specify under what circumstances the state veterinarian could take action and what actions the state veterinarian could take to enforce the statute.

Second, if the state veterinarian does not have the authority to enforce N.D.C.C. § 36-15-21 without Board consent, you ask whether the Board should be called immediately or if the matter can be considered at a regular Board meeting which may take place two or three months later. Meetings of the Board are governed by N.D.C.C. § 36-01-02, which provides:

The state board of animal health shall hold its meetings at the state capitol at such times as it may designate, but there may not be more than four regular meetings in any one year. The president of the board may call a special meeting whenever in his judgment it becomes necessary.

(Emphasis added.)

Based on this provision, the president of the Board could call a special meeting to enforce N.D.C.C. § 36-15-21 whenever it was deemed necessary. Because there is nothing in N.D.C.C. ch. 36-15 mandating that the Board consider the matter immediately, it is my opinion that the Board has discretion to determine whether a special meeting is necessary and when the special meeting should be held, or whether the matter can be considered at the next regular Board meeting.

Third, you ask whether the Board can issue a "special permit" after the fact, when the livestock have already been in the state in violation of N.D.C.C. § 36-15-21 for a period of time. N.D.C.C. § 36-15-21 does not authorize a "special permit" for animals which have been brought into the state in violation of the statute, but authorizes the Board to grant an exception to that section. N.D.C.C. § 36-15-21 prohibits persons from "bringing" certain cattle in the state which have not been vaccinated and states that any person who "brings" into this state or "acquires" within this state cattle contrary to the statute is guilty of a class A misdemeanor. N.D.C.C. § 36-15-22 also authorizes the Board to order that cattle brought into the state in violation of N.D.C.C. ch. 36-15 be returned to their state of origin or slaughtered, and to impose a civil penalty for failure to comply with the chapter.

N.D.C.C. § 36-15-21 attempts to stop a certain activity before it happens through prohibitions. Accordingly, the Board, through its

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authority to grant an exception, can also proactively allow the prohibited activity. However, it is likely that there may be instances when cattle are brought into the state in violation of the chapter, and the Board will not know of the violation(s) until after the fact, when the cattle have been in the state for a period of time. Under these circumstances, it may be necessary for the Board to take enforcement action after the fact. Because N.D.C.C. § 36-15-21 states that any person who brings cattle into this state or acquires cattle within this state contrary to the statute is guilty of a class A misdemeanor, and the determination of whether to pursue a criminal enforcement action must be left to the local state's attorney, it is my opinion that the Board cannot grant an exception to N.D.C.C. § 36-15-21 after the fact. If the Board determines that cattle have been brought into the state in violation of the chapter, the Board has four options: the Board can impose a civil penalty pursuant to N.D.C.C. § 36-15-22, order the animals returned to their state of origin or slaughtered pursuant to N.D.C.C. § 36-15-22, contact the state's attorney to pursue a criminal enforcement action, or forego any enforcement action at all, since the statute provides the Board with the discretion to enforce penalties for violation of the statute but does not require the Board to take enforcement actions.

Finally, you ask whether importing livestock illegally would also be in violation of N.D.C.C. § 36-01-18. This section provides:

The state veterinarian and authorized agents and representatives of the commissioner, for purposes of inspecting livestock in transit for health or ownership identification, may stop vehicles transporting livestock on public highways of this state. When signaled by the state veterinarian or an authorized agent or representative of the commissioner to stop, the operator of any vehicle shall stop the vehicle, show any health or identification forms which are required to be carried in transportation of livestock, and permit the inspector to make an inspection of the livestock being transported if deemed by the inspector to be necessary. Failure to stop when so directed is a class A misdemeanor. The inspector is authorized to use a stop signal.

The state veterinarian, or any authorized agent or representative of the commissioner, may call any sheriff or deputy sheriff, police officer, or highway patrol officer, to execute its orders, and those officers must obey. Any law enforcement officer may arrest and take

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before any district judge serving the county any person found violating this chapter. The law enforcement officer shall immediately notify the state's attorney of the county of the arrest and the state's attorney shall prosecute the person found violating this chapter.

In summary, N.D.C.C. § 36-01-18 does the following: 1) authorizes the state veterinarian and agents to stop vehicles transporting livestock; 2) requires vehicle operators to stop when signaled and provide any forms necessary for the transportation of livestock; and 3) authorizes law enforcement officers to enforce the section. A violation of N.D.C.C. § 36-01-18 would occur if a person did not stop when signaled or did not show the requested health or identification forms. N.D.C.C. § 36-01-18 does not place any restrictions or conditions on livestock that enter the state, and does not establish under what circumstances livestock enter the state "illegally," but rather, authorizes the inspection of such livestock during transportation, which may lead to evidence of violations of other statutes. A person importing livestock "illegally," or in violation of other statutes, would not necessarily also be in violation of N.D.C.C. § 36-01-18.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

cgm/pg