

OPINION
67-7

September 11, 1967 (OPINION)

Mr. Clarence Krogstad

Dairy Commissioner

RE: Agriculture - Livestock Dealers - Bonds

This is in reply to your request for an opinion of this office with regard to acceptance of Packers and Stockyards Bond form, in lieu of the present state bond form, for bonding of livestock dealers in North Dakota pursuant to Section 36-04-05 of the North Dakota Century Code.

The Packers and Stockyards Bond, a copy of which you enclosed, states that its condition is as follows:

"Applicable if Principal SELLS on commission (1) if the said Principal shall pay when due to the person or persons entitled thereto the gross amount, less lawful charges, for which all livestock is sold for the accounts of others by said Principal.

"Applicable if Principal BUYS on commission or as a dealer (2) If the said Principal shall pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by said Principal for his own account or for the accounts of others, and if the said Principal shall safely keep and properly disburse all funds, if any, which come into his hands for the purpose of paying for livestock purchased for the accounts of others.

"Applicable if others clear through Principal (3) If the said Principal, acting as a clearing agency responsible for the financial obligations of other registrants engaged in buying livestock, VIZ.; (insert here the names of such other registrants as they appear in the application for registration)"

The conditions specified in the North Dakota statute, Section 36-04-05 of the North Dakota Century Code, are as follows:

" * * *

1. The faithful performance by the dealer of his duties as such;
2. The compliance by the dealer with all of the provisions of this code relating to the purchase of livestock, wool, or poultry, as the case may be;
3. The full and complete payment to the seller for all livestock, wool, or poultry purchased by the dealer; and
4. The full protection of any person who deals with such

dealer.

* * * "

We appreciate your calling to our attention the case of Lee v. Tolchinsky, 65 N.D. 292, 258 N.W. 276, based on the original enactment of this chapter (Chapter 7 of the 1933 Session Laws). In that case we note it was claimed that the defendants sold thirty-four head of hogs infected with hog cholera to the plaintiff, that all of the thirty-four hogs died of said disease, and one hundred fifty-seven other hogs belonging to the plaintiff became infected with the disease and died or were necessarily killed on account thereof. On the basis of the statutory language of the condition specified in the bond, the Court dismissed the action as to the insurance company as the bond was a "buyer's" bond.

The statutory language under which the aforementioned case was decided is as follows:

" * * * 'Each applicant (that is, applicant for license to engage in buying livestock) shall file with his application a surety company bond in the sum of five thousand dollars, in which the Commissioners shall be the obligee but which shall be for the purpose of protecting any person dealing with such applicant from loss by reason of facts of fraud, dishonesty, forgery and theft on the part of the principal.' * * * ."

Without going into the full context of Chapter 7 of the 1933 Session Laws, we might mention that the Act defined "buyer" of livestock, required "buyers" to be licensed, provided for accounts of such "buyers", etc.

Shortly after that decision the 1935 Legislature completely revised the Act, defining and licensing "dealers" rather than "buyers." Subsequent legislative enactments revised the conditions of the bond to those quoted from Section 36-04-05 of the North Dakota Century Code above.

On such basis, we think it obvious that at the current time the bond of a livestock "dealer" is something more than a "buyer's" bond and that the livestock "dealer" can be responsible on his bond for more acts than simply "buying" of livestock.

Looking again to the conditions of the Packers and Stockyards Bond, it would appear that it is basically concerned with payment of moneys to the proper person as seller, buyer, or clearing house, as the case may be. However, looking to the conditions specified in said Section 36-04-05 of the North Dakota Century Code, we note considerably broader language. On such basis, it is our opinion that a Packers and Stockyards Bond form such as you enclosed is not broad enough to cover the responsibilities of a licensed North Dakota livestock dealer as specified in said Section 36-04-05 and that, therefore, such bond cannot be substituted therefor. It is therefore our conclusion that both of your questions must be answered in the negative.

HELGI JOHANNESON

Attorney General