

**OPINION  
75-102**

May 9, 1975           (OPINION)

Mr. Gordon W. Schnell  
Attorney at Law  
100 Liberty National Bank Building  
P.O. Box 1097  
Dickinson, ND 58601

Dear Mr. Schnell:

This is in response to your letter received by this office on April 16, 1975, wherein you request an opinion relative to conducting public or private horse sales on Sunday. You submit the following facts and inquiry in your letter:

On behalf of the North Dakota Stockmen's Association I am writing to request an Attorney General's opinion as to whether North Dakota law prohibits the holding of public or private horse sales on Sundays. It is requested that this opinion encompass both open consignment sales held for the benefit of several consignors, and individual dispersal sales where only one seller is involved.

This has become a problem for the Stockmen's Association because of the difficulty in furnishing brand inspectors for sales held on Sundays, and such sales have become increasingly frequent within the past year. They would therefore like to know whether these sales can properly be held on Sundays and whether they are obligated to furnish brand inspectors on such day.

I would appreciate receiving an opinion at an early date, as there have been several requests made for brand inspectors at sales scheduled for Sundays in May, and the Chief Brand Inspector would like to be able to respond to these requests as soon as possible.

We would initially note the provisions of Section 12-21.1-01 of the North Dakota Century Code, as amended, as follows:

12-21.1-01. PROHIBITION OF SUNDAY BUSINESS AND LABOR. It shall be unlawful on Sunday for any person, firm, or corporation:

1. To engage in or conduct business or labor for profit in the usual manner and location, or to operate a place of business open to the public; or
2. To cause, direct, or authorize any employee or agent to engage in or conduct business or labor for profit in the usual manner and location, or to operate a place of business open to the public. (Emphasis supplied)

In view of the provisions of this statute, it is clear that the type

of activity described in your letter would constitute the engagement in business for profit and would be operating a place of business open to the public. This would appear true whether the auction was pursuant to an open consignment or whether it was an individual dispersal sale involving only one seller. The statute addresses itself to "any person, firm, or corporation".

There are three types of exemptions to the prohibitive statute. These appear to involve (1) the personal exemption applicable to persons who in good faith observe a day other than Sunday as the Sabbath, if they refrain from engaging in or conducting business or labor for profit and close their place of business to the public on that day, as set forth in Section 12-21.1-02; (2) the personal property exemption which involves the sale of certain specified items of personal property, as set forth in Section 12-21.1-03, and (3) the business exemption which involves the operation of certain specified businesses as outlined in Section 12-21.1-04. Review of the exemption statutes fail to indicate that the business activity or the personal property involved in the transactions contemplated by your inquiry would be exempt. Whether the persons involved in the sale or sales claim the personal exemption set forth in Section 12-21.1-02 of the North Dakota Century Code, as amended, is a matter beyond the scope of your inquiry to the extent that the same is not submitted as a qualifying factor in arriving at a legal conclusion.

In direct response to your inquiry, we are of the opinion that holding public or private horse sales on Sundays, whether the same be of open consignment or of individual dispersals, are contrary to and in violation of Section 12-21.1-01 of the North Dakota Century Code, as amended.

We trust that the foregoing conclusions and comments will adequately set forth the opinion of this office upon the matter.

Sincerely,

ALLEN I. OLSON

Attorney General