

OPINION  
60-145

August 26, 1960 (OPINION)

LIVESTOCK AUCTION MARKETS

RE: Sales - Fees

We are in receipt of your letter of August 25, 1960, and we herewith supply you with the following information.

You requested an opinion from this office concerning what constitutes a sale within the meaning of the chapter 36-05, titled LIVESTOCK AUCTION MARKETS. You base your question on the following set of circumstances.

If a particular auction market advertised and held regular sale on a certain day, said regular sale being completed at 4:00 p.m. that certain day; and then, at 8:00 p.m. that same day, a special purebred bull sale was conducted which special sale terminated at approximately 11:45 p.m. that same day, do the events of that particular day constitute one sale of livestock or two separate, distinct sales?"

You have further indicated to this office that it is your opinion that the transactions or events in question constituted two distinct sales.

At the onset, we state that this office is in basic agreement with your opinion. We wish to point out that the provisions of chapter 36-05 of the North Dakota Revised Code of 1943, as amended, have been incorporated into the LAWS AND REGULATIONS PERTAINING TO LIVESTOCK SANITARY CONTROL WORK, which were issued by the North Dakota Livestock Sanitary Board after said rules were officially promulgated pursuant to proper procedure and after the opinion of the Attorney General dated January 22, 1958, approved their legality. These rules and regulations then have the force and effect of law.

We refer you to section 36-0510 of the 1953 Supplement to the North Dakota Revised Code of 1943, as amended by the 1957 Legislature in Chapter 234 of the 1957 Session Laws and as further amended in 1959 Session Laws by Chapter 276, Section 9, which provides:

36-0510. INSPECTION OF LIVESTOCK; FEES AND REGULATIONS GOVERNING. When an animal enters a livestock auction market and before it is offered for sale, it shall be inspected for health by a state-employed veterinarian . . . acting under rules promulgated by the North Dakota stockmen's association and the livestock sanitary board. Veterinary inspection shall include all livestock whether it be moved interstate or intrastate. The fees for such inbound inspection shall be sent to the livestock sanitary board by the auction market company and shall be deposited with the state treasurer in the livestock auction market fund out of which, upon legislative appropriation, the veterinary inspector's fees and costs of

administration shall be paid. The fees for such inspection and the manner of paying the veterinarian shall be established by rules and regulations adopted by the livestock sanitary board and such fees shall be set in accordance with the costs of providing inspection service for the purpose of conforming with the federal laws and regulations governing interstate movement of cattle." (Emphasis supplied)

Section 1 of Regulation 49 of the Livestock Sanitary Board which took effect July 1, 1957, and which is based on section 36-0510 states in substance the provisions of 36-0510.

Section 3 of Regulation 49 of the Livestock Sanitary Board provides:

The fees for such services shall be \$25.00 for each sale. The veterinarian is to send a list of the animals inspected to the State Livestock Sanitary Board after each sale, showing the number of cattle, sheep, hogs, or other livestock which was allowed to enter the sales ring and was inspected. Once a month he shall render an account of his services on the regular vouchers for services to the Livestock Sanitary Board and he shall be paid out of the special Livestock Sales Ring Fund adopted by the 1957 Legislature." (Emphasis supplied).

It is to be noted that the only substantial change enacted by the 1959 Legislature dealt with changing the name of chapter 36-05 from Livestock Sales Ring (1957) to Livestock Auction Markets (1959 S.L.).

Section 4 of Regulation 49 provides that:

After July 1, 1957, all sales rings shall be assessed \$25.00 for each sale held and shall send such moneys to the Livestock Sanitary Board at the end of each month, to be deposited in the Livestock Sales Ring Fund out of which the sales ring veterinarians shall be paid as above outlined." (Emphasis supplied).

Section 36-0514 of the North Dakota Revised Code of 1943 is still in effect and it provides that:

Any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment. Every person who shall violate any of the provisions of this chapter after having been convicted previously of a violation of any provision thereof shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment." (Emphasis supplied).

It would appear from the set of circumstances your refer to that the answer in a sense lies in the question as phrased. The sale transactions which took place during the day appear to be denominated "regular sale." The transactions in the evening appear to be

denominated "special purebred bull sale."

It would seem clear that if a sale denominated as regular, which is held during the day, which deals with the general run of cattle or livestock, and which terminated at 4:00 p.m. (approximately) that day is sufficiently separated in both time (four hours) and subject matter, and is therefore distinguishable from a sale beginning in the evening at 8:00 p.m. the same day, and which deals with a special type of animals, such as purebred bulls.

It is our conclusion, and further the opinion of this office that the events of the day in question constituted two distinct sales, for each of which the \$25.00 fee provided for in Regulation 49, Section 4 of Laws and Regulations of the North Dakota Livestock Sanitary Board is applicable.

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Attorney General