Opinion No. 58-107

May 22, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr., Assistant Attorney General

TO: Mr. Chas. A. Curtis, Acting Secretary, Cattle Sanitary Board of New Mexico, P. O. Box 1296, Albuquerque, New Mexico

QUESTION

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Under existing laws may the bond requirement of § 47-10-2 be disregarded in instances where operators of livestock sales ring operators are bonded in keeping with the provisions of the Packers and Stockyards Act?

CONCLUSION

Yes.

OPINION

ANALYSIS

By Laws 1937, Chapter 59, § 2, there is provided:

"It shall be unlawful for any person to operate a sales ring in this state unless he be the holder of an unexpired, uncancelled license issued by the board. Any person, except as herein otherwise provided, on application to the board in such form as the board shall prescribe, . . ., and on the payment of a license fee of ten dollars ($ 10.00), and the filing and keeping on file with the board of a bond, approved by the board as to form and sufficiency, in the penal sum of ten thousand dollars ($ 10,000), conditioned that the principal shall comply with all the terms and provisions of this act (47-10-1 to 47-10-10), with some surety company authorized to do business in this state as surety, . . . The bond herein required shall be for the benefit of any person damaged by any breach of the condition thereof, and any such person shall be entitled to bring an action thereon, in his own name. The board shall furnish a certified copy of any such bond to any person applying therefor . . . ."

From the language quoted, it is apparent that under state law an appropriate bond shall be provided as a prerequisite to the issuance of a sale ring license. Looking further, however, and with reference to the question hereinabove stated, the federal law cited sets out in part that:

"The Secretary may require reasonable bonds from every market agency and dealer, under such rules and regulations he may prescribe, to secure the performance of their obligations, and whenever, after due notice and hearing, the Secretary finds any registrant is insolvent or has violated any provisions of this chapter he may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect within not less than five days, unless suspended or modified or set aside by the Secretary or a court of competent jurisdiction. July 12, 1943, c. 215, § 1, 57 Stat. 422."

The provision last quoted is found as a part of the "Packers and Stockyards Act" which was first enacted in 1921. (Aug. 15, ch. 64). As pointed up in Allen C. Driver, Inc., v. Mills, Md. 1952, 86 A. 2d 724, this chapter was passed to remedy abuses that had grown up in large stockyards in various parts of the country. The enactment of this law imposed federal control on all stockyard owners, stockyard services, market agencies and dealers. "Sales rings", as defined by § 47-10-1, are, in our opinion, included within the area over which Congress has elected to establish control under its delegation of authority found in the commerce clause of the Constitution.

In Colorado v. U.S. (C.A. 10th, Colo.), 219 F.2d 474, it was held that:

"It may be conceded, as contended for by Colorado, that it conducts its inspection activities in its sovereign capacity as a state. Since the decision by the Supreme Court in United States v. State of California, 297 U.S. 175, 56 S. Ct. 421, 80 L. Ed. 567, **it can no longer be doubted that when a state in its sovereign capacity enters a field which has been preempted by the Federal Government under its Constitution and Congressional Enactment pursuant thereto, the sovereign power of the state with respect to such activities is diminished and subordinated to that of the Federal Government.** A distinction which appellant seeks to draw between the facts in the California case and this case is without substance and does not require a contrary holding. The California case, as does this, involved an act by Congress under the commerce clause to regulate commerce under that power. Congress had in each case constitutional authority to pass the Act in question. The validity of the Act and the regulations involved in this suit are not in question and Colorado is subject to its provisions the same as are private persons or agencies.

Nor is the situation altered because the asserted action by Colorado arose under the police power of the state. Many cases are cited by Colorado in which police power regulations have been held to be Constitutional but in none of those cases did they conflict with a Congressional Enactment on the same subject lawfully enacted under Constitutional authority. It has been held consistently that such state acts when in conflict with the Federal law must give way.

The situation in short then is this. Congress under the commerce clause passed the Stockyard Act regulating the handling and transportation of cattle at posted stockyards, engaged in interstate commerce. **In this respect it preempted and occupied the entire field with respect to the regulated activities. It provided for comprehensive**

regulations with respect to the activities covered by the Act. The activities covered by the Act are thereby removed from regulation by the state. Anyone, including a state, municipality, private person or association undertaking to perform any of the acts or furnish any of the services covered by the Act at posted stockyards must comply with the requirements of the Act and the regulations promulgated thereunder. This Colorado failed to do and thus incurred the penalties provided therein and imposed by the judgement of the court." (Emphasis Supplied)

Accordingly, it is our opinion that in those instances where a live-stock sales ring is operated so as to come within the provisions of the Federal Packers and Stockyard Act that a state bonding requirement is without effect and unenforceable.