

Opinion No. 66-29

March 4, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Paul J. Lacy, Assistant Attorney General

TO: Mr. Jay F. Rosenthal, Assistant District Attorney, Eleventh Judicial District, 218 West Apache, Farmington, New Mexico 87401

QUESTION

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1. Under 47-15-5 N.M.S.A., 1953 Compilation, does the word "shall" obviate any discretion the Commission may have in ordering the prohibition of domestic animals running at large upon the receipt of a petition to prohibit?
2. Under 47-15-3 N.M.S.A., 1953 Compilation, may these people referred to live below the high line canals of irrigation or conservancy districts, or live elsewhere though farm within the boundaries of the districts?
3. May both the husband and wife as well as adult children in a family sign the petition referred to by 47-15-4 N.M.S.A., 1953 Compilation, to prohibit domestic animals running at large.

CONCLUSIONS

1. Yes.
2. See analysis.
3. Yes.

OPINION

{*35} ANALYSIS

Section 47-15-5, supra, provides as follows:

"ANIMALS RUNNING AT LARGE -- ORDER PROHIBITING -- PUBLICATION. -- Upon receipt of such petition the said board of county commissioners shall make an order prohibiting the running at large of such animals within the limits of such platted townsite and platted addition thereto, or within the limits of such conservancy or irrigation districts, as the case may be, and shall cause such order to be published once each week for four consecutive weeks in some newspaper published in said town or in said

county and shall cause printed hand bills containing such order to be posted in at least three public places in such town or in such district."

The word "shall" in a statute will generally be given its usual meaning unless the intent of the legislature is clearly to the contrary. **National Automobile and Casualty Ins. Co. v. Garrison**, 76 Cal.App.2d 415, 173 P.2d 67. In the above quoted statute the intent of the legislature to make it mandatory upon the county commissioners to prohibit certain animals from running at large if a proper petition is presented to them seems clear. The only discretion allowed to the county commissioners in such a situation is a determination of the validity of the petition as it appears on its face.

Section 47-15-3, supra, provides as follows:

"ANIMALS RUNNING AT LARGE IN UNINCORPORATED TOWNS, CONSERVANCY DISTRICTS AND IRRIGATION DISTRICTS. -- The boards of county commissioners of the several counties of this state are hereby authorized and empowered to prohibit the running at large of cattle, horses, swine, sheep, goats, burros, and other domestic animals **within the limits of any platted townsite, or platted addition of any unincorporated town having a {*36} population of not less than three hundred people, and within the limits of any conservancy or irrigation district organized under the laws of the state of New Mexico situate in whole or in part in such county.** The high line canals of such conservancy or irrigation district shall be deemed the boundaries of such district for the purposes of this act." (Emphasis supplied.)

In our opinion the first sentence of Section 47-13-3, supra, was intended by the legislature to be read in the disjunctive. When this is done it is seen that a board of county commissioners may prohibit the running at large of certain stock in the two following situations:

1. Within any platted townsite or platted addition of any unincorporated town having a population of at least 300 persons.
2. Within the limits of any conservancy or irrigation district wholly or partly within the county.

Therefore, the condition precedent of a population of 300 persons must be met before the county commissioners may act to prevent at large running of animals in a platted townsite or addition of any unincorporated town. But the commissioners are bound by no such condition precedent in order to make such a ruling effective in a conservancy or irrigation district.

Thus, we conclude that your second question is not applicable to any problem of preventing animals from running at large in a conservancy or irrigation district, for the commissioners may so rule even though less than 300 persons actually reside in the district.

Section 47-15-4, supra, reads as follows:

"ANIMALS RUNNING AT LARGE -- PETITION TO PROHIBIT. -- The inhabitants of any such town, conservancy district, or irrigation district desiring such action in the county in which they reside may apply to the board of county commissioners of the county in which such town is situate, or the board of county commissioners in which such conservancy district or irrigation district is situate in whole or in part, **by petition in writing signed by at least twenty-five residents of such town or districts**, asking for an order prohibiting the running at large of such animals within the limits of such town or districts; which petition shall define the limits of said town, which limits shall be plainly marked by posts at the corners of the platted townsites of such town, and of any platted additions thereto. The limits of said conservancy or irrigation districts shall be the boundaries of the high line canals of such districts, as defined in the preceding section." (Emphasis supplied.)

Again, we invoke the familiar rule of statutory construction which requires that the words of a statute must be given their usual or ordinary meaning unless the legislative intent is clearly to the contrary. **Albuquerque Lumber Co. v. Bureau of Revenue of N.M.**, 42 N.M. 58, 75 P.2d 334; **National Automobile and Casualty Ins. Co. v. Garrison**, supra. In this statute the word "residents" must be given its ordinary meaning because no contrary intent appears from the statute.

A "resident" is a person who resides in a given location. More important, for purposes of this opinion, each and every member of a family who resides in a locality is a "resident". Therefore, we conclude that members of one family can each sign the petition if each is a resident of the geographic area wherein the running of stock at large is sought to be prohibited.