

Opinion No. 80-24

July 1, 1980

OPINION OF: Jeff Bingaman, Attorney General

BY: Thomas Patrick Whelan, Jr., Assistant Attorney General

TO: Mr. G. M. (Dogie) Jones, Director, New Mexico Livestock Board, 113 Third Street, S.W., Albuquerque, New Mexico 87103

ANIMALS AND ANIMAL INDUSTRY

New Mexico Livestock Board inspectors have the authority and duty to inspect Indian owned livestock at livestock sales rings located on non-Indian land outside the exterior boundaries of any pueblo or reservation.

FACTS

The Navajo Tribe has requested the New Mexico Livestock Board to refrain from inspecting Navajo owned cattle presented at off-reservation livestock sales rings until a Navajo Tribe Inspector clears them. The Board, uncertain of its authority over Indian owned livestock, has acceded to the Tribe's request but now wishes for a clarification of its authority.

QUESTIONS

1. Do New Mexico Livestock Board Inspectors have authority to inspect Indian owned livestock at livestock sales rings located on non-Indian land outside the exterior boundaries of any pueblo or reservation?
2. Do they have a duty to do so?

CONCLUSIONS

1. Yes.
2. Yes.

ANALYSIS

Section 77-10-5, NMSA, 1978 states:

"All livestock received at a sales ring shall be inspected by a duly accredited inspector of its board as soon as practicable after its receipts. . . . Before the removal thereof it shall again be inspected as to ownership by an accredited inspector of the board . . ."

OPINION

The statute's use of the words "shall be inspected" means inspectors **must** inspect. They have no choice in the matter; they have a legal duty to inspect. "The ordinary and usual meaning of the word 'shall' in a statute is mandatory, not permissible." **Montano v. Williams**, 89 N.M. 86, 547 P.2d 569 (1976), aff'd 89 N.M. 252, 550 P.2d 264 (1976). The statute creates no exception for any class of livestock or livestock owners. On its face the statute applies to everyone who brings livestock to a sales ring. Indians, however, often enjoy special status under federal law. Before concluding that board inspectors must inspect Indian owned cattle at sales rings, we must examine federal law to see if it exempts them from the state's inspection laws.

The United States Supreme Court has summarized the status of Indians {**160*} outside reservations as follows:

"Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State."

Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148-149 (1973). This principle applies to both civil and criminal activities. **Id.** Thus, livestock board inspectors must inspect Indian owned cattle at sales rings as quickly as practicable unless there is a federal statute or regulation which expressly prohibits them from doing so.

No such federal statute or regulation exists. Federal statutes and regulations pertaining to Indian livestock do not mention brand inspections at off-reservation sales rings. See, e.g., 25 USC §§ 179,229; 25 CFR parts 151, 152. Some pueblos or tribes, such as the Navajo, have created their own livestock inspection programs. But tribal or pueblo governments cannot affect the state's authority over off-reservation Indians by promulgating ordinances relating to their reservations. Only the U.S. Congress can affect the state's authority over off-reservation Indians. **U.S. v. State of Montana**, 604 F.2d 1162, 1172 (9th Cir. 1979).

This does not mean that a state livestock inspector cannot, or should not, ever hold Indian owned cattle at a sales ring until they are inspected by the appropriate pueblo or tribal livestock inspector. Section 77-10-5 requires the inspector to "satisfy himself as to the ownership of such livestock." There may be instances where an inspector cannot determine the ownership of Indian owned cattle without consulting with the inspector from the Indian's pueblo or tribe. In those cases it would be legal to hold the livestock for inspection by the pueblo or tribal inspector.

In conclusion, it is our opinion that New Mexico Livestock Board inspectors have a mandatory legal duty to inspect all Indian owned livestock arriving at off-reservation sales rings as soon as practicable. The inspector may order the livestock held for inspection only in those cases where such an inspection is necessary to enable the state inspector to satisfy himself as to the ownership of the livestock.

ATTORNEY GENERAL

Jeff Bingaman, Attorney General