

Opinion No. 39-3188

June 23, 1939

BY: FILIO M. SEDILLO, Attorney General

TO: Mr. Tom Summers, Chief New Mexico State Police, Santa Fe, New Mexico.
Attention: Lieut. A. B. Martinez

{*70} In your recent letter you request an opinion as to the proper interpretation of Chapter 172, Laws of 1939.

This act amends Chapter 173, Laws of 1937, making it unlawful to "knowingly cause or permit" livestock on fenced highways, by striking out the word "knowingly," so as to make it unlawful for any owner of livestock "to permit or allow" such stock to run at large on fenced highways, with or without his knowledge. It is now well settled that the legislature may make an act of commission or omission a crime without regard to intent or knowledge. {*71} State vs. Dobry, 250 N.W. 702; Com. v. Ober, 189 N.E. 601.

This statute is a police regulation for the protection of the public on the highway. The purpose of the statute is to require a high degree of diligence on the part of the owner, and to hold him criminally liable for a lack of diligence in seeing that the stock are kept away. A failure to restrain stock from the highway is "to permit or allow" them on the highway, as those words are used in this particular statute. It is his negligence that the legislature intended to punish under this amendment, and, of course, the very fact that the animals are where it is his duty to see that they are not furnishes evidence of that negligence or lack of diligence.

Therefore, when stock are found loose on the highway, a criminal warrant should be sworn out and the owner arrested and prosecuted. In such cases the courts will have power to convict and punish, without the necessity of proving the owner had any knowledge that his stock was on the highway. I repeat that it is his duty under this law to see that they are off the highway at all times, and a violation of that duty is the thing made punishable by the statute. The punishment is a fine of not more than two hundred dollars. Cf. State vs. Poplowski, 133 A. 671.

At the trial the defendant would, of course, be entitled to rebut this showing of negligence, by evidence of facts from which due diligence on his part may be inferred. A man who has his horse securely fenced in, tied, or in a corral, and it is stolen and abandoned on the highway, would by such showing effectively rebut the evidence of negligence inferred from the fact that the horse was loose on the highway.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.