

CATTLE AND HOGS) duty of brand inspector to inspect.  
INSPECTION OF )

November 13, 1937



Hon. Carl E. Williamson  
Prosecuting Attorney  
Ripley County  
Doniphan, Missouri

Dear Sir:

This department is in receipt of your letter of October 4, 1937, in which you request an opinion as follows:

"I should like an interpretation of Section 12778, P. 224, Laws of Missouri, 1937, referring to the inspecting of cattle and hogs in counties having open stock range.

This section provides for inspection by the brand inspector of the county, providing for a penalty in the following section for a violation, but my question is as to whether it is the duty of the sheriff to make this inspection on all outgoing shipments of livestock, or only in instances where inspection is requested.

It may have been the intention of the legislature when the first act of this nature was passed in 1921 to require all persons to have livestock inspected to guard against theft. The 1935 act simply adds hogs to the list of livestock to be inspected. I have never known of the act being enforced, if it does mean all such livestock leaving the confines of the county, but if it does mean that, then it may go a long way toward curbing thefts of such animals in counties such as this."

Section 12778, R.S. 1929, as reenacted Laws 1937, page 223, is as follows:

"All persons, firms or corporations shipping, driving or permanently moving any neat or horned cattle or hogs from any county in this State or subdivision thereof, having free stock range, to any point or destination outside the confines of such county, shall, before removing the same, have such cattle and/or hogs, duly inspected by an authorized brand inspector whose duty it shall be to inspect the same and make a record of all brands, marks, labels or other means of identification and to furnish a certificate thereof to the effect that such cattle and/or hogs, have been duly inspected, to such person, firm or corporation applying therefor, and such brand inspectors certificate shall be legal authority to procede in the removal of such cattle within the meaning of this Article, Provided, that nothing in this Article shall prevent persons or individuals from driving or removing their own cattle from their range as defined in Section 12, 818 of the Revised Statutes of the State of Missouri, for the year of 1929, to their own premises."

Section 12778a, R.S. 1929, as enacted Laws 1937, p. 224, is as follows:

"Any person violating any of the provisions of Section 12,778, shall be deemed guilty of a felony and upon conviction, be punished by imprisonment in the Penitentiary for a term of not less than two years or more than ten years or by fine of not less than \$100.00, and imprisonment in the County jail for a term of not more than one year or by a fine of not less than \$100.00."

Section 12778, R.S. 1929, Laws 1937, p. 223, is exactly the same as it originally was except for the addition of the words "hogs" and "and/or hogs" in the places where these words appear in said section. Article II, Chapter 88, R.S. 1929, relates to the inspection of cattle in counties having free stock range and provided for the inspection of cattle under certain conditions. The reenactment of Section 12778 of this article and chapter provided also for hogs to be inspected. However, by the reenactment of this section, the legislature did not expressly incorporate hogs in the balance of the sections of said article which provides for the furnishing of certificates of inspection by the brand inspector, the duties of said inspector and the fee to which he is entitled for making the inspection. They only mention cattle as being the animal to be inspected and that the certificate of inspection on cattle be furnished to certain persons and that the fee for said inspection is to be five cents per head for all cattle inspected. We merely desire to point out the above fact before we proceed to answer your question as to whether the statute requires the brand inspector to make said inspection only upon request or upon all cattle and hogs so shipped, moved or transported.

In State ex rel Ellis v. Brown, 33 S.W. 2nd 1.c. 107, the court in construing a statute said:

"There is no universal rule by which directory provisions in a statute may, in all circumstances, be distinguished from those which are mandatory. In the determination of this question, as of every other question of statutory construction, the prime object is to ascertain the legislative intention as disclosed by all the terms and provisions of the act in relation to the subject of legislation and the general object intended to be accomplished. Generally speaking, those provisions which do not relate to the essence of the thing to be done and as to which compliance is a matter of convenience rather than substance are directory, while the provisions which relate to the essence of the thing to be done, that is, to matters of substance, are mandatory."

In *Ousley v. Powell*, 12 S.W. 2nd 1.c. 103, the court has said:

"When a statute provides what results shall follow a failure to comply with its terms, it is mandatory and must be obeyed."

In *State ex rel Stevens v. Wurdeman*, 246 S.W. 1.c. 194, it is said:

"Usually the use of the word 'shall' indicates a mandate, and unless there are other things in a statute it indicates a mandatory statute."

With the above principles of construction in mind, it is to be noticed that Section 12778, *supra*, provides that "all persons, firms or corporations \* \* \* \* \* shall, \* \* \* have such cattle and/or hogs duly inspected" by the brand inspector, "whose duty it shall be to inspect the same \* \* \*, and to furnish a certificate thereof \* \* \* \*, to such person, firm or corporation applying therefor." In short, this section requires that before cattle or hogs may be moved out of certain territory defined, the person moving the same must have them inspected, and that it is the duty of the brand inspector to so do.

Section 12778a, *supra*, provides a penalty for violation by any person of Section 12778.

#### CONCLUSION

Therefore, it is the opinion of this department that Section 12778, *supra*, is mandatory and makes it the duty of the brand inspector to inspect all cattle and hogs moved or shipped out of the territory defined in said statute, whether requested to do so or not by the person, firm or corporation desiring to move said cattle or hogs.

Respectfully submitted,

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Assistant Attorney General

APPROVED By:

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J.E. TAYLOR  
(Acting) Attorney General