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Economic Affairs Interim Committee

61st Montana Legislature

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April 23, 2010

Christian Mackay
Department of Livestock
301 N. Roberts
Helena, Montana 59620

Dear Mr. Mackay:

I am writing to you with respect to an inquiry I received from Senator Roy Brown who is a member of the Economic Affairs Interim Committee. Senator Brown was contacted by an individual who was concerned with a letter that was sent by Dr. Eric Liska, the brucellosis program veterinarian, on January 13, 2010, to local brand inspectors stating; "It is up to you as our local brand enforcement official to make certain at the time of inspection that the producer can present you with a letter stating their exemption from testing requirements or all brucellosis test eligible, sexually intact cattle and/or bison, 12 months of age or older, must be tested prior to movement or change of ownership."

Dr. Liska's letter raises several concerns. First, the Brands Division is not under the Animal Health Division and it would appear that Dr. Liska, on behalf of the Animal Health Division, has no authority to direct local brand inspectors to do anything. Second, I can find no statutory authority to allow brand inspectors to enforce any testing requirements. The duties of state stock inspectors and deputy stock inspectors is set out in 81-3-203, MCA. The statute in subsection (1) states that state stock inspectors and deputy stock inspectors: "shall inspect livestock that are intended for sale, removal, shipment, or slaughter at a licensed slaughter plant and issue a certificate of inspection for the livestock if it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to possess the livestock." Section 81-3-203(2), MCA, provides that the certificate of inspection: "must specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock or of the applicant for inspection and the purchaser or transferee, if applicable, the class of the animal, the marks and brands, if any, on the animal, and any other information on the certificate that the department may require." This means that the only way in which a brand inspector could receive information concerning brucellosis testing is if the certificate asks for that information.

However, even if the certificate requested any testing information the statute is clear that state stock inspectors and deputy stock inspectors have no discretion to refuse to issue a certificate of inspection since subsection (1), as already pointed out, states that if it appears with reasonable certainty that the applicant is the owner or has the right to possess the livestock then the brand inspector shall issue the certificate of inspection. Section 81-3-203(3) provides that if it appears with reasonable certainty that the applicant is the owner or has the right to possess the livestock then the brand inspector shall issue to the person a separate market consignment permit or transportation permit for each owner when the owner or owners or their authorized agents sign the permit certifying the brands, description, and destination of the livestock. Section 81-3-203(4) provides that when it appears with reasonable certainty that the applicant is the owner of the livestock or has lawful right to possess the livestock, a state stock inspector shall issue a transportation permit that will allow the movement of the livestock into an adjoining county to land owned or controlled by the owner or the owner's agent for purposes of grazing.

All of the actions above pertaining to brand inspectors are required by the statute. Under state law it appears that only a veterinarian can prohibit the movement of livestock. It does not appear that a testing issue could in anyway authorize a brand inspector to not comply with the statutory requirements of 81-3-203, MCA. On behalf of the Economic Affairs Interim Committee I would greatly appreciate it if you or a representative of the Department of Livestock could respond to the concerns that I have set out, either by letter or at the May 25, 2010, meeting of the Economic Affairs Interim Committee. Thank you in advance for your assistance in this matter.

Sincerely,

Bart Campbell
Staff Attorney

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