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16-002

NO. STATE OF NEBRASKA
OFFICIAL
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DEPT. OF JUSTICE

SUBJECT: Whether the Nebraska Brand Committee has statutory authority to vary the inspection fee and registered feedlot enrollment fee.

REQUESTED BY: Shawn D. Harvey
Executive Director of the Nebraska Brand Committee

WRITTEN BY: Douglas J. Peterson, Attorney General
Emily K. Rose, Assistant Attorney General

You have requested our opinion regarding whether the Livestock Brand Act ("Act"), Neb. Rev. Stat. § 54-170, *et seq.*, provides statutory authority for the Nebraska Brand Committee ("Brand Committee") to vary the inspection fee and the registered feedlot enrollment fee. Specifically, whether the Brand Committee has statutory authority to charge a $0.75 enrollment fee to registered feedlots when the inspection fee per head is raised to $1.00. Our opinion is that currently the Act does not provide the Brand Committee with the authority to vary the inspection and registered feedlot enrollment fees.

Neb. Rev. Stat. § 54-1,120 (1)(b) (Reissue 2010, Cum. Supp. 2014) states that the fee for the registered feedlot program shall be set by the Brand Committee "...per one thousand head capacity or average annual inventory *so as to correspond with the inspection fee provided under section 54-1,108.*" (emphasis supplied). Therefore, the registered feedlot fee must correspond, or be the same as, the inspection fee provided under Neb. Rev. Stat. § 54-1,180. To find otherwise would defeat the legislative intent of Legislative Bill 768, which removed the statutory cap for the registered feedlot fee in order to "...allow the fee to be set consistent with statutory intent and current practice that the fee correspond with the per/head inspection fee established pursuant to section 54-1,108." Committee Records on LB 768, 103rd Neb. Leg., 2nd Sess. 1 (February 11, 2014) (Committee Statement).

The Brand Committee points to Neb. Rev. Stat. § 54-1,180 (2)(a) (Reissue 2010, Supp. 2015) as a basis for a variance in inspection and registered feedlot fees. Such statutory provision provides in pertinent part that the inspection fee per head "...may vary to encourage inspection to be performed *at times and locations that reduce the cost of performing the inspection but shall otherwise be uniform*." (emphasis supplied). However, this authority to vary per head inspection fees was only intended to encourage producers to bring their cattle to Brand Committee designated sites on days where it would be most cost effective for the Brand Committee inspectors to physically inspect, such as at an auction market, instead of having the inspectors drive out to ranches to do the physical inspections. *See* Committee Records on LB 589, 97th Neb. Leg., 1st Sess. 10,13 (February 6, 2001).

The variance language in Neb. Rev. Stat. § 54-1,180 (2)(a) (Reissue 2010, Supp. 2015) was not intended to apply to inspections performed at registered feedlots as such inspections do not represent a Brand Committee designated time and location that reduces the cost of inspection. Instead, for registered feedlots, the Brand Committee inspectors still travel out to the feedlot, but instead of doing a physical inspection, they perform a quarterly audit of records to verify ownership. The inspections performed at registered feedlots, therefore, are merely a different *method* of doing the inspection, not a Brand Committee designated time and location that reduces the cost of an inspection.

It should also be noted that this auditing method of inspection for registered feedlots is precisely one of the main benefits of the registered feedlot program. Such method gives the registered feedlots flexibility in how they do business because they are not required to submit to a physical brand inspection before selling the cattle and can, therefore, move cattle more efficiently, at any time of day, without inspection.

We conclude that the Brand Committee does not have statutory authority under the Act to vary the registered feedlot fee and inspection fees. The registered feedlot fee, pursuant to Neb. Rev. Stat. § 54-1,120 (1)(b) must correspond, or be the same as, the per head inspection fee under Neb. Rev. Stat. § 54-1,180 (2)(a). Further, the variance language in Neb. Rev. Stat. § 54-1,180 (2)(a) is inapplicable to the quarterly audit inspections performed at registered feedlots.

Very truly yours,

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