

How 1/9/52

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ARIZONA ATTORNEY GENERAL

January 7, 1952

Op. No. 52-2

M. V. Gibbons, Esq.
Apache County Attorney
Courthouse
St. Johns, Arizona

My dear Mr. Gibbons:

This acknowledges receipt of your letter of December 21, received in this office on December 29, in which you ask the opinion of this office on the following question:

"In an un-incorporated town where cattle and horses are allowed to run at large night and day, and whose owners have no means of keeping them and take no steps to control or look after them, and where said livestock secures their foliage by breaking into enclosures, fields and yards causing considerable damage. I am wondering if under the provision of Section 43-4603, such a situation could be handled as a nuisance and people so permitting their livestock to run at loose ends could be charged with a misdemeanor. In connection with the livestock above mentioned they constitute continuous hazard on the highways for traffic using the same."

Two opinions of this office on a situation similar to that which you describe have been written to Barry De Rose, Gila County Attorney. Since these opinions, considered together, offer you the information which you seek, we forward herein excerpts from the one, No. 51-30, and a copy of the other, No. 51-57.

As you will note by the suggestion contained in Opinion No. 51-57, it would appear that you might well invoke the provisions of Section 43-4603 ACA 1939 and abate the nuisance which you describe. This section would seem to apply, given the proper facts, either to enclosed or unenclosed lands.

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Sections 50-603 and 50-604 mentioned in Opinion No. 51-30 apply only where the land damaged is enclosed with a lawful fence, whereas Section 43-3615 would relate to the overstocking of unenclosed land.

Your suggestion therefore that the provisions of Section 43-4603, supra, be invoked to remedy the evil you describe as a nuisance would be proper under the circumstances mentioned in your query.

With kindest personal regards and best wishes, we are

Sincerely,

FRED O. WILSON
Attorney General

PHIL J. MUNCH
Assistant Attorney General

PJM:f