

OFFICIAL OPINION NO. 79-35, Random check of livestock transport by brand inspectors

September 10, 1979

Mr. Chad Addison, Staff Director  
State Brand Board  
108 East Missouri  
Pierre, South Dakota 57501

Official Opinion No. 79-35

**Random check of livestock transport by brand inspectors**

Dear Mr. Addison:

You have requested an official opinion from this office in regard to the following question:

QUESTION:

Can those vested with police powers under SDCL 40-18-14 legally stop trucks at random to check and see if the carrier has the proper brand inspection papers as required by South Dakota state law for the transportation of cattle, horses and mules?

SDCL 40-18-14, 40-18-15 and 40-18-16 read as follows:

40-18-14. The brand board may appoint a chief inspector and not to exceed two other inspectors, whether or not they are employed by any agency designated by the board for the purpose of carrying on livestock ownership inspection work, and vest such inspectors with police powers for the enforcement of all the laws pertaining to the inspection, sale, branding, misbranding, ownership, transportation or theft of livestock. Such inspectors shall have all of the powers and authority of police officers anywhere within the state of South Dakota while enforcing the laws pertaining to livestock. This shall in no way restrict the brand board from hiring additional inspectors without such police powers.

40-18-15. In addition to the duties, powers and responsibilities imposed on the state brand board under chapter 40-19, such board shall have general charge and supervision of the inspection of all livestock moved from place to place within the South Dakota livestock ownership inspection area and of all livestock moved out of the South Dakota livestock

ownership inspection area for the purpose of determining the proper ownership and brands, if any, of such livestock and shall have general charge, supervision and custody of all instruments, records and files in connection with such inspection activities.

40-18-16. The state brand board shall have the power and authority to pass rules and regulations pursuant to the provisions of chapter 1-26 relating to the administration of, but not inconsistent with the provisions of chapters 40-18 to 40-21, inclusive.

The Supreme Court of the United States has recently decided a "random stop" case. The Court held:

The holding in this case does not preclude Delaware or other states from developing methods of spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion. Questioning of all oncoming traffic at roadblock-type stops is one possible alternative. *Delaware v. Prouse*, #77-1571. Argued January 17, 1979. Decided March 17, 1979.

The permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's fourth amendment interests against its promotion of legitimate governmental interests.

In my opinion the answer to your question is yes. The decision of the United States Supreme Court in the *Prouse* case clearly indicates a balancing by the Court of the individual's interests versus the state's interest. A significant factor in those deliberations was the fact that there the random stops would cover automobiles as well as other sorts of vehicles, and that given this factual situation there was a violation of an expectation of privacy that outweighed the minimal state interest in securing a check of driver's licenses for safety purposes.

In the concurring opinion of Justice Blackmun and Justice Powell the decision specifically stated that the decision would not throw any constitutional shadow upon the necessarily somewhat individualized and perhaps largely random examinations by game wardens in the performance of their duties. In those situations these justices held the Court's balancing processes and the value factors under consideration would be quite different. Given those different factual circumstances, I believe it is fair to state that the Court would have reached a different result.

It is my view that the inspection program you are implementing is a program which, on balance, would justify a random check even under the *Prouse* case rationale.

Respectfully submitted,

Mark V. Meierhenry  
Attorney General

MVM:RHW:DOC:esp