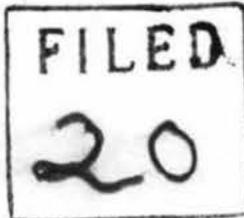


AGRICULTURE: Hogs appraised and slaughtered under provisions of Section 267.160 RSMo, 1949, may be disposed of at federally approved packing plants, and claims for indemnity payable therefor by State of Missouri are legal claims to be paid, if, and when, an appropriation is made for such purpose.

September 3, 1952



9-3-52

Honorable H. E. Curry
State Veterinarian
Department of Agriculture
Jefferson City, Missouri

Dear Mr. Curry:

The following opinion is in reply to your recent request reading as follows:

"You have probably noticed in the paper that plans were under consideration for indemnifying owners of swine that have been, or may be found to be, affected with the contagious, infectious disease of swine known as vesicular exanthema, which is comparable to foot and mouth disease affecting cattle, sheep and swine.

"Mr. Charles, Brannan, Secretary of the U. S. Department of Agriculture, has declared this condition to be an emergency; and the Federal Government are drawing up plans for indemnifying owners of animals that may be slaughtered at packing establishments operating under federal inspection. We are advised the plan will provide for the federal and state governments to participate in the paying of such indemnities on a fifty-fifty basis. I have been requested to advise the Chief of the U. S. Bureau of Animal Industry whether Missouri would be in a position to participate in such a plan; and before making any commitments obligating the State of Missouri for payment of indemnities in connection with this matter, I respectfully request a ruling on this question.

"Is there any legal way the State of Missouri can participate in the indemnifying

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of owners of swine afflicted with or exposed to the disease known as vesicular exanthema (foot and mouth disease of swine) on a cooperative basis with the U. S. Department of Agriculture, Bureau of Animal Industry, unless such animals are killed and buried forthwith after being quarantined and appraised on the premises? It is my understanding that the Federal Government will not participate in such indemnities except in instances where such hogs are slaughtered at federally approved packing houses."

The disposition of the State legislature of Missouri with respect to cooperating with the federal government in suppression of contagious diseases among domestic livestock is clearly reflected in the language found in Section 267.070, RSMo 1949, which provides:

"The said commissioner of agriculture and state veterinary surgeon shall cooperate with any commissioner or other officer appointed by the United States for the suppression of contagious diseases among domestic animals, so far as the provisions of this chapter and the appropriation made in accordance therewith will allow in suppressing and preventing the spread of contagious and infectious diseases among domestic animals in this state."

In your opinion request you have disclosed that vesicular exanthema is a foot and mouth disease of swine. The particular statute applicable to the quarantine, appraisal and slaughter of swine affected with or exposed to foot and mouth disease is Section 267.160, RSMo 1949, which provides:

"1. Whenever any neat cattle, hogs, sheep or goats, quarantined by the state veterinarian or his deputy in this state, affected with, or exposed to foot and mouth disease, rinderpest or contagious pleuropneumonia, or which in anywise are capable of communicating either of said diseases to other animals, said animals shall, as soon as they are appraised, be killed by the sheriff of the county in which the animals are located, or by a representative of the commissioner of agriculture, as the state veterinarian may elect, and all of said animals shall be deeply buried, and the carcasses thereof shall be thoroughly covered by quicklime or other effective disinfectant.

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"2. The appraisal of such animals shall be made jointly by the owner and a representative of the commissioner of agriculture, or by the owner and a representative of the United States department of agriculture when the federal government shall elect to so participate. In case of any disagreement a disinterested third party shall be called in and a majority decision as to the appraisal of such livestock shall be final. The representative of the commissioner of agriculture or the representative of the United States department of agriculture shall prepare an itemized statement of the appraisement in triplicate, one copy of which shall be presented to the commissioner of agriculture. The commissioner shall certify a claim for one-half of the appraisement to the governor, which shall constitute a legal claim against the state of Missouri, and on approval of the governor the account shall be certified to the state comptroller, and a warrant shall be issued therefor, but in no case shall the state pay more than is paid by the federal government for any animal or animals.

"3. No indemnity shall be paid by the state for any neat cattle, hogs, sheep or goats affected with foot and mouth disease, rinderpest or contagious pleuropneumonia, or exposed thereto, unless such animals are killed and buried forthwith after being quarantined and appraised. A careful account of the cost of the killing and the burying and also the disinfecting of the premises shall be kept by a representative of the commissioner of agriculture, or a representative of the United States department of agriculture, and one-half of the cost thereof shall be paid by the state on certificates of the commissioner to the governor, and the governor shall approve and certify same to the state comptroller and a state warrant shall be issued to the owner as payment."

It is noted that subparagraph 1 of Section 267.160, RSMo, 1949, quoted above, contains a directive as to the manner of disposal of diseased animals which have been ordered killed. Your opinion request discloses that the federal government will not participate in paying indemnities unless the hogs are slaughtered at federally approved packing houses. We find nothing in the language found at subparagraph 1 of Section 267.160, RSMo, 1949, which makes it mandatory that the hogs be disposed of only in the manner therein specified. A rule of statutory construction

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particularly applicable in this instance is found restated in *Morris v. Karr*, 114 S.W. (2d) 962, 342 Mo. 179, l.c. 182, as follows:

"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."

We view the essence of the thing to be done under the statutes in question to be to control the spread of the contagious and infectious disease infecting hogs, and if that may be as effectively done at federally approved packing houses as it is contemplated will be done by following the directory language contained in subparagraph 1 of Section 267.160, RSMo, 1949, we do not consider such statutory provision as a bar to participation in the federal plan to give indemnities. With the close supervision of this type of project by the State veterinarian and the State commissioner of agriculture, as provided by statute, in conjunction with the representative of the United States department of agriculture, we perceive of no danger to the spirit and letter of our State statutes in this regard insofar as disposal of the killer animals is concerned.

Indemnities payable under Section 267.160, supra, to effect full and complete cooperation between our state and federal government as directed in Section 267.070, supra, are limited to appropriations made in accordance with the provisions of Chapter 267, RSMo, 1949. A search of legislative acts reveals no appropriation to pay such indemnities. In the case of *Armontrout v. Smith*, 182 S.W. (2d) 571, 353 Mo. 486, the Supreme Court of Missouri dealt with a very similar problem involving a dangerous and contagious disease affecting cattle. On the matter of paying claims for indemnity the court spoke as follows at 353 Mo. l.c. 490:

"*** Of course, nothing can ever be paid, on any claim against the state, until there is an appropriation. But valid agreements may nevertheless be made, before an appropriation is made to pay what is due thereunder, if there is express authority for making them."

We conclude that Sections 267.070 and 267.160, RSMo 1949, when read in the light and purpose of such enactments, constitute sufficient authority to clothe claims properly processed

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under Section 267.160, RSMo, 1949, with legality entitling their payment, if and when, the legislature makes a proper appropriation therefor.

CONCLUSION

It is the opinion of this department that hogs affected with foot and mouth disease may, under authority contained in Section 267.070 and 267.160, RSMo, 1949, be appraised and subsequently slaughtered at federally approved packing plants in order to effect full cooperation with a plan whereby the Federal Government will pay one-half of the indemnity provided for disposal of such hogs; and the indemnity to be paid by the State of Missouri constitutes a valid and legal claim against the State to be disposed of if, and when, a lawful appropriation is made therefor.

Respectfully submitted,

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APPROVED:



J. E. TAYLOR
Attorney General

JLO'M:lw