

Live Stock, When May Be Shipped Into This State From Other States. Quarantine, As Against Live Stock From Other States. State, Right to Protect Itself Against Disease From Shipment of Animals Into This State.

In the absence of legislation by Congress, a state may protect itself against disease and may enact legislation for the inspection of animals coming from other states for the purpose of excluding those which are diseased and admitting those which are healthy, but where Congress has enacted inspection laws, these laws supercede those enacted by the state, and if animals destined for shipment into this state are accompanied by a Federal certificate of inspection they cannot be excluded by the state.

October 10th, 1912.

Dr. M. E. Knowles,
State Veterinarian,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of September 26th stating that on account of a fatal and rapidly developing epizootic disease among horses in Kansas and Nebraska, you, on September 18th, wired all railroad companies operating inter-state not to accept any shipments of horses from either of these States designed to Montana, and that in reply to your order the Northern Pacific has notified you that they have been informed by their legal department that they cannot refuse to accept horses for transportation to Montana if accompanied by a federal certificate of health. You request my official opinion as to whether or not your order is legal and can be enforced.

In reply I will say that your order is too broad. The governmental power over inter-tate commerce is vested exclusively in Congress by the Commerce Laws of the Constitution, and therefore, is withdrawn from the States; but in the absence of legislation by Congress, a state may protect itself against disease, and may enact legislation for the inspection of animals coming from other states for the purpose of excluding those which are diseased and admitting those which are healthy.

Reid vs. Colo., 187 U. S. 137.

A state cannot, however, exclude all animals, whether diseased or not, coming from other states.

R. R. vs. Husen, 95 U. S. 465.

But by the Act of Congress, February 2nd, 1903, and the Act of March 3, 1905, (32 St. 791; 33 St. 1264; U. S. Comp. St. Sup. 1905, pp. 610 to 620) it is enacted that when the inspector of the Bureau of Animal industry has issued a certificate that he has inspected cattle or live stock and found them free from disease, "such animals so inspected and certified may be shipped, driven, or transported * * * into any * * * state or territory * * * without further inspection or the exaction of fees of any kind, except such as may at any time be ordered or exacted by the Secretary of Agriculture." This is the supreme law, and if the state law conflicts with it the state law must yield.

Asbell vs. Kansas, 209 U. S., 251.

The Secretary of Agriculture may, under authority conferred upon him by Congress as above stated, have issued certain rulings with reference to quarantined states or districts which I am not aware of and I would advise you to take this matter up with him in the event you desire to prevent horses being shipped into this state from Kansas and Nebraska. In the absence of any rulings by that department you can only exclude such animals as have failed to pass the federal inspection.

Yours very truly,

ALBERT J. GALEN,

Attorney General.