

Poultry—Whether Considered Live Stock.

Chapter 262 of the Laws of 1921 construed not to include poultry or fowls.

Chester C. Davis, Esq.,
Commissioner of Agriculture,
Helena, Montana.

My dear Mr. Davis:

I received your letter inquiring whether poultry may be considered live stock under the provisions of Chapter 262 of the Laws of 1921 for the purpose of assessing the same for the use of the Livestock Sanitary Board, and whether poultry may be ordered destroyed because affected by tuberculosis and the owner be compensated under the provisions of said Chapter 262, relating to compensation for destruction of tubercular live stock.

In every law of the State relating to the live stock industry employing the words "live stock" the legislation relates to animals, no mention of fowls or poultry appearing.

See Sections 2068-2073, inclusive, 2074-2081, inclusive, 2082-2085, inclusive, 3299-3306, inclusive, 3309-3316, inclusive, 3317-3345, inclusive, 3351-3356 inclusive, 3374-3382, inclusive, 3407-3411, inclusive, of the Revised Codes of 1921.

Webster's Dictionary defines "live stock" as "Horses, cattle and other domestic animals kept for profit." Standard Dictionary defines "live stock" as "Domestic animals kept for farm purposes, especially marketable animals, as cattle, horses, sheep." This definition is adopted in 25 Cyc. 1515.

In Chapter 262 of the Laws of 1921, Sections 12 to 20, providing for compensation to owners for destruction of tubercular animals, the word "animals" is used throughout. While fowls are animals in the broadest sense, and as distinguished from plants, in common usage and in connection with the live-stock industry and in the penal law of Montana, the term is restricted to the quadrupeds ordinarily comprising the domestic animals, such as horses, cattle, sheep, and hogs, as distinguished from poultry.

In the case of *Debitulia v. Lehigh etc. Co.*, 174 Fed. 886, 890, it was held that the Act of Congress fixing an import duty upon animals did not include fowls. However, Congress had previously legislated upon the subject and had included animals as distinguished from fowls in the same Act, and this fact was mentioned in the opinion as indicating the intention of Congress not to include fowls under the term animals.

Throughout the entire history of legislation relating to the live stock industry of Montana, which commenced with the earliest law making in the territory, the legislative intent to deal with domestic quadrupeds as distinguished from fowls is apparent. The laws relating to branding, fencing against live stock, larceny of live stock, and the laws for inspection and prevention of diseases uniformly apply to the domestic animals, and have no proper application and obviously are not meant to apply to poultry. This is especially true of Chapter 262 of the Laws of 1921, providing for compensation to owners for animals slaughtered, it conclusively appearing from the reading of the chapter as a whole that the Legislature did not intend to include poultry or fowls under the provisions of this chapter.

It is, therefore, my opinion that there is no authority in the law for indemnifying owners of poultry affected by tuberculosis, and that the live stock tax authorized by Chapter 127 of the Laws of 1915, for the use of the Livestock Sanitary Board and for payment of indemnity for stock slaughtered because of disease, is not assessable or collectable against poultry.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.