

Opinion No. 184.**Horse Herd Districts—Classification of
Horses—Horses, Sale of—Sheriffs
Fees and Expenses, Payment
in Advance.**

HELD: It is the duty of the stock inspector to classify horses prior to sale under horse herd district sale.

The sheriff must collect fees and expenses in advance of sale under horse herd district sale.

April 28, 1933

You have submitted the following questions arising in connection with the interpretation of Chapter 57 of the

Laws of 1933, amending Chapter 119, Laws of 1931, relating to horse herd districts:

"1. Is the sheriff required to proceed with a classification of the animals and a sale thereof pursuant to subdivision 4 of the law, if, in his opinion, the expenses will be greater than the value of the animals?

"2. If a sale is had, may the sheriff deduct the expenses incurred by him before any portion of the proceeds from the sale is paid to the party who took up the animals as damage for their keeping?"

The first question assumes that it is the duty of the sheriff to classify the horses. Said section 4, among other things, provides: "That prior to such sale the sheriff shall have said horses classified as follows: Class One shall include (a) horses not bearing a registered brand and which **in the opinion of the Stock Inspector** are of a value not to exceed Ten Dollars per head, and (b) horses * * * which **in the opinion of the Stock Inspector** are of a value not to exceed Ten Dollars per head. Class Two shall include horses bearing registered brands and which **in the opinion of the Stock Inspector** are of a value in excess of \$10.00 per head." In view of the wording of this section, it is my opinion that it is the duty of the Livestock Inspector to classify the horses as in each instance his opinion as to value is required.

Section 4892 R. C. M. 1921 provides: "The officers mentioned in this chapter must not, in any case, perform any official services unless the fees prescribed for such services are paid in advance* * *." Since the sheriff is one of the officers mentioned in Chapter 35, Part IV of the Political Code, which is the chapter referred to in the above quoted section, he must require payment of all fees in advance of the performance of any official services. In my opinion this would also apply to his services and expenses in connection with the holding of sales provided for in the above section 4.

Since he must collect his fees and expenses in advance, the situation stated in question No. 2 is not likely to arise. In case his fees and expenses are not collected in advance it would no doubt be because they were guaranteed from

the proceeds of the sale and, if so, he would have authority to deduct them from the proceeds of the sale before any portion thereof is paid to the person who requested the sale in payment of damages and charges for the care of the horses while in his possession.