

Opinion No. 247.

Herd Districts—Duties of Stock
Inspectors—Stock Inspectors—Live-
stock.

Held: Stock inspector shall take up
all estrays found within his
district whether the same are
found within general herd dis-
trict or not.

September 8, 1944.

Mr. Paul Raftery, Secretary
Montana Livestock Commission
State Capitol
Helena, Montana

Dear Mr. Raftery:

You have requested an opinion of this office as to whether the Livestock Commission's stock inspector in the Cascade County district has authority to take over, under the estray law, three horses, the ownership of which is unknown, from a person who took up the horses when found trespassing on his premises, which premises are within the confines of an established herd district.

Neither your commission nor that of the deputy county attorney of Cascade County states whether this herd district was a general herd district organized under the provisions of Sections 3384 to 3389.1, Revised Codes of Montana, 1935, or a horse herd district organized under the provisions of Sections 3389.2 to 3389.6, Revised Codes of Montana, 1935, or whether there were any conditions precedent to the taking of the horses by the stock inspector. Due to these omissions in information, I am taking it for granted that this district was organized under the first mentioned sections and that the impounder is turning these horses over to your inspector without obligation on the part of the Livestock Commission.

Section 3334, Revised Codes of Montana, 1935, as amended by Chapter 34, Laws of 1943, provides in part as follows:

"Any stock inspector authorized by the Montana Livestock commission shall take into his possession all estrays found within his district."

It is to be noted the section just quoted does not state that the inspector must find the estrays, but it specifically states he shall take into his possession all **estrays found** within his district. Thus, in accordance with the statute, any stray found by anyone within the district should be taken by the stock inspector. Neither does this statute differentiate as to where the stray is found; it merely states within the district. Further Section 3386, Revised Codes of Montana, 1935, providing for the impounding of livestock found trespassing on property within a herd district, provides if the owner of the stock is unknown the stock inspector shall be notified. It is true said Section 3386 does not specifically provide the stock inspector shall take them, but it also

does not provide specifically for any other disposition of such stock. The Montana Supreme Court in Jorgenson v. Story et al., 78 Mont. 477, 254 Pac. 427, by way of casual explanation intimates that in the event such trespassing stock falls within the definition of estrays, they would be sold by the stock inspector.

Therefore, upon the assumed state of facts hereinbefore set forth, it is my opinion the stock inspector should take over these horses from the person who took them up, regardless of the fact the horses were running at large upon his premises within a general herd district at the time they were taken up.

Sincerely yours,
R. V. BOTTOMLY
Attorney General