

**Opinion No. 14****Livestock Sanitary Board—Confiscation and Destruction of Poultry—  
Section 46-209, RCM, 1947**

**Held:** The Montana Livestock Sanitary Board cannot return to the consignor, or confiscate and destroy poultry infected with or exposed to any infectious, contagious, communicable or dangerous poultry disease since Chapter 161, laws of 1929 (46-209, RCM, 1947) does not grant such regulatory or confiscatory power to the Board.

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May 17, 1957

Dr. James J. Hurry  
Livestock Sanitary Board  
Helena, Montana

Dear Dr. Hurry:

You have requested my opinion concerning the scope of the Montana Livestock Sanitary Board's power for regulation of poultry in Montana as defined by Section 46-209, RCM, 1947.

In particular, you ask whether Section 46-209 empowers the Board to confiscate and destroy or return to the consignor, poultry or poultry hatching eggs shipped into Montana in violation of existing import laws when these shipments are known to be infected with a contagious disease, or are from flocks which are known to have such disease, or from hatcheries which cannot qualify or have not qualified for a poultry shipping permit. If the Board has such confiscatory power, you wish to know what liability, if any, is incurred by the Board when such destruction is ordered.

Chapter 161, Laws of 1929 (46-209, RCM, 1947) was enacted to protect and foster the poultry industry in Montana. The Montana Livestock Sanitary Board, with regard to poultry imported into Montana, was empowered:

"3. To promulgate and enforce such reasonable rules, regulations and orders as they may deem necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable or dangerous diseases affecting poultry into this state, and to this end to promulgate and enforce such reasonable rules, regulations and orders as they may deem necessary or proper governing inspections and tests of all poultry intended for importation into this state, before it may be imported into this state."

"4. To promulgate and enforce such reasonable rules, regulations and orders as they may deem necessary or proper for the inspection, testing and quarantine of all poultry imported into this state."

Chapter 262, Laws of 1921 (46-208 (10), RCM, 1947), empowers the Montana Livestock Sanitary Board to destroy "livestock" which the

Board deems harmful to the "livestock" industry and to compensate the owners for the destruction of any property destroyed by order of the Board. Sections 46-218 and 46-219, RCM, 1947, provide an express method for computing the amount to be received by the owner for the destruction of his property. Chapter 161, Laws of 1929 (46-209, RCM, 1947) is not an amendment to Chapter 262 and the powers exercised by the Board in relation to "livestock" are not applicable to "poultry". Section 46-209, RCM, 1947, merely empowers the Board, when acting in respect to imported "poultry", to quarantine, inspect and test. There is no provision made for the destruction of and payment for property or re-shipment of diseased poultry to the consignor. Without a specific grant of such power, the Board may not exercise such control over "poultry". The powers of an administrative agency are found only in the statute creating the agency and defining its powers. See, *In Re Farrell*, 36 Mont. 254, 262, 92 Pac. 785; *Welch v. Dean*, 49 Mont. 263, 267, 141 Pac. 548; *State ex rel. Dragstedt v. State Board of Education*, 103 Mont. 336, 338, 62 Pac. (2d) 330; *State ex rel. Peterson v. District Court*, 107 Mont. 482, 487, 86 Pac. (2d) 403; 147 ALR 1028; 73 C.J.S. 369, 372; 42 Am. Jur. 316.

If the term "livestock" as used in Chapter 262 included poultry, then Chapter 161 is a nullity. We may not, under the rules of statutory construction, attribute to the legislature a meaningless act. Rather we must give effect to every word and phrase enacted, if possible. See *In re Wilson's Estate*, 102 Mont. 178, 193, 56 Pac. (2d) 773; *Butte Miners Union v. Anaconda Copper Mining Co.*, 112 Mont. 418, 439, 118 Pac. (2d) 148; *Fletcher v. Paige*, 124 Mont. 114, 119, 220 Pac. (2d) 484; *State ex rel. Dean v. Brandjord*, 108 Mont. 447, 457, 92 Pac. (2d) 273.

In the absence of the utmost necessity or specific power to confiscate and destroy diseased poultry, an administrative agency may not exercise such a confiscatory power. In *Herlihy v. Donohue*, 52 Mont. 602, 610, 161 Pac. 164, the court stated:

" . . . That within the narrow limits of actual and pressing necessity, private property may be taken and destroyed for the public good, scarcely admits of debate. . . . But in every instance where such a right has been exercised and questioned, the decision upholding the right makes it clear beyond controversy, that only the most overriding necessity will justify or excuse the officer ordering such destruction."

It is therefore my opinion that the Montana Livestock Sanitary Board is not empowered by Chapter 161, Laws of 1929 (46-209, RCM, 1947) to return to the consignor, or confiscate and destroy poultry infected with or exposed to any infectious, contagious, communicable or dangerous poultry disease when imported into Montana. As the Board lacks authority to confiscate poultry, the question of compensation need not be determined.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General