

**Inspection of Diseased Sheep—Conflict Federal and State Laws—
Interstate Commerce.**

The act of Congress of March 3, 1905, gives the secretary of agriculture authority to make rules and regulations for the government inspection and disinfection of sheep or other live stock shipped from a quarantined state or territory into another state or territory. Such rules and regulations, in so far as they apply to sheep shipped from one state or territory to another state or territory, control and are superior to the laws of this state. Where sheep that are shipped into this State have been inspected and dipped pursuant to the rules and regulations of the secretary of agriculture, Chapter 45, Laws of 1905, of the State of Montana have been substantially complied with, in so far as the inspection and dipping of the sheep are concerned, but the other provisions of said Chapter 45, to the effect that sheep so shipped into the State must be branded and placed in quarantine, etc., being additional precautions to those established by the rules and regulations of the secretary of agriculture, are not in conflict and should be enforced by the local inspectors of this State.

Helena, Montana, July 10, 1905.

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

Dear Sir:—Your letter of the 16th instant to hand, relating to the sheep dipping order of Dr. R. A. Ramsay, of Fargo, N. D., federal inspector in charge, in so far as such order affects sheep shipped into or out of the State of Montana, the particular question asked being, do federal authorities have any local authority in this State, particularly when such authority conflicts with our State law governing the dipping of sheep, which is being strictly enforced?

An act of congress approved March 3, 1905, provides by Section 3 "that it shall be the duty of the secretary of agriculture, and he is hereby authorized and directed, when the public safety will permit, to make and promulgate rules and regulations, which shall permit government inspection, disinfection, certification, treatment, handling and method and manner of dealing and shipment of cattle or other live stock from a quarantined state or territory, or from a quarantined portion of any state or territory, into another state or territory."

Pursuant to such act of congress the secretary of agriculture on May 1, 1905, adopted regulations governing the inspection, disinfection, etc., of live stock which are the subject of interstate commerce. On June 1, 1905, the secretary of agriculture issued a rule declaring that a contagious communicable disease known as scabies "exists among sheep in the following named states and territories, Washington, Oregon, Montana, North Dakota, South Dakota, California, Nevada, Idaho, Utah, Wyoming, Colorado, Nebraska, Kansas, Texas, Arizona, and New Mexico, and

thereby quarantined the territory embraced in all of said states and territories.

Under said regulations adopted by the secretary of agriculture on May 1, it is provided (see regulations 29 to 38, inclusive) that any sheep shipped from any state declared to be in quarantine must be dipped as follows: if the sheep are shipped for stocking or feeding purposes from a band in which disease actually exists, they must be dipped twice, ten days apart, and shall be submitted to inspection before shipment. If they are shipped for stocking or feeding purposes from a band in which no disease is known to exist, but which band has been exposed to the contagion of disease, they may be shipped after one dipping, or sheep that are shipped for immediate slaughter, to a recognized slaughtering center, may be dipped only once where they are known to be diseased, and where they have simply been exposed, they may be shipped for immediate slaughter without being dipped at all.

Regulation 30 also provides that sheep which are shipped from a territory not in quarantine need not be dipped prior to shipment, but if they are unloaded in route, or at destination, and placed in infected premises, they shall then be treated as exposed sheep and shall not be forwarded to their final destination, for purposes other than immediate slaughter, until they shall have been dipped, under the supervision of an inspector of the bureau of animal industry.

You are advised that the above rules and regulations, in so far as they apply to sheep that are the subject of interstate commerce—that is, any sheep that are shipped from one state or territory to another state or territory—control and are superior to the law of this state. Should any conflict arise between the rules and regulations of the secretary of agriculture and the local laws of this state, congress having full authority to pass laws regulating interstate commerce, the State can pass no law in conflict therewith that would interfere with the operation of the national law and the rules and regulations made thereunder.

The state law, Chapter 45, Laws 1905, Section 19, provides that all sheep that are shipped or driven into this state, with the intention on the part of the owner of holding them within the state longer than is necessary to feed in transit, which must be done in railroad yards, must be at once quarantined, dipped and branded with a red letter "S" on the right side, under the supervision of a duly authorized inspector at the point of entry or unloading or as near such point as may be deemed safe by the inspector in charge without danger of scattering infection; they must then be moved within ten days to the ranch or range, where they must be dipped a second time and remain in quarantine for ninety days, or until inspected and released by the order of the state veterinary surgeon.

It will be noticed, by regulation 33 of the secretary of agriculture, that certain dips have been approved as proper for dipping sheep, and Section 21 of the state law provides that the dip prescribed by the state veterinary surgeon may be any one recognized by the United States Bureau of Animal Industry. It is the intention of the state law that all

sheep shipped into the state must be dipped at least twice and quarantined for the period therein prescribed. Section 15 of said law provides that the inspector may make such order with reference to diseased sheep as he may deem necessary, as provided in Section 18 of said act. Section 18 provides that upon being notified of a shipment of sheep into this state, the inspector in the county in which the sheep shall first come to be unloaded shall immediately inspect the same and make such order or orders for their quarantine, treatment and dipping as he may deem necessary. The provisions of said Section 19, of Chapter 45, laws 1905, to the effect that "any sheep shipped or driven into this state with the intention on the part of the owner of holding them within the state longer than is necessary to feed in transit * * * must be dipped under the supervision of a duly authorized inspector," is in conflict with the regulations of the secretary of agriculture in so far as it attempts to make such dipping by the state inspector a condition precedent to the right to run sheep in this state which have been shipped from another State. The intention of the regulations of the secretary of agriculture, and the result of the endorsement of such regulations by the federal inspectors, is to enable a person shipping sheep from another state or territory to have his sheep in such condition upon their arrival in the state or territory to which they are shipped that they will be entitled to receive the same treatment upon arrival as sheep that were raised or otherwise legally running in this state. In other words, the dipping of such sheep by federal inspectors prior to their shipment, or immediately after their arrival, when they are shipped from clean territory and exposed in transit, has the effect of removing from the consideration of the state inspectors the fact that such sheep were shipped from another state or territory; but as the regulations of the secretary of agriculture make no provision for branding or quarantining of such diseased or exposed sheep for a period long enough to determine if the dipping has been effective, therefore the state inspector would have authority to immediately establish quarantine of such sheep and have them branded with the letter "S," as provided by the state law, and if, during such quarantine, or at any time thereafter, it should develop that the sheep were still diseased, then the state inspector could proceed with further dippings and fully enforce the provisions of the state law against such sheep, the same as he could against sheep raised in this state, among which disease was found, or which had become exposed to scabies.

Respectfully yours,

ALBERT J. GALEN,

Attorney General.