

**Animals, Slaughter Of—Contagious Diseases—Glanders—State
Veterinarian, Duties and Powers Of.**

Under the provisions of Section 3004, et seq., Political Code, the state veterinarian is empowered to order and compel the slaughter of horses, cattle or asses suffering from a dangerous, incurable infectious or other contagious disease. Method of procedure prescribed.

Helena, Montana, Sept. 19, 1905.

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

Dear Sir:—I beg leave to acknowledge receipt of your communication of the 15th instant, submitting the following question:

“Am I authorized and empowered under the Live Stock Sanitary Law, Sections 3005 and 3006, Political Code, to order and compel the slaughter of horses, cattle or asses suffering from a dangerously incurable, infectious or contagious disease; and if so, what is the correct method of procedure?”

The article of the statute of which the sections referred to in your inquiry are a part is protective in character. No doubt has ever existed as to the constitutional authority of the legislature to provide for quarantine of animals afflicted with any of the diseases named and included in this article.

Where an animal is afflicted with an incurable, dangerous and contagious disease, if no authority exists for slaughtering such animal, the only protection possible would be close and perpetual quarantine, and in case of contagious diseases, if the affliction is spread by particles of inoculated matter being driven by air currents, the only effective quarantine would be the keeping of the animal in a building. True the expense of the quarantine must be paid by the owner, (Sec. 3004, Political Code), but this does not entirely relieve the state of all expense, nor does it change or affect the principle involved. This condition of quarantine may continue for years with reference to the same animal.

It is safe to assert that no such anomalous condition and needless procedure were ever intended by the framers of the constitution or the makers of the statute. Similar laws authorizing the slaughter of animals so affected have been held constitutional, as a proper exercise of the police power in the following cases:

Newark Ry. Co. v. Hunt, 50 N. J. L. 308; Miller v. Horton, (Mass.) 23 Am. St. 850; Blue v. Beach (Ind.) 80 Am. St. 195; Tappan v. State, 146 N. Y. 44; Pierson v. Zehr (Ill.) 29 N. E. 834.

These sections of the statute—3005 and 3006, above—vest in the state veterinarian the authority to slaughter animals so afflicted, and the laws of 1905, p. 75, give the authority to quarantine the premises. The method and order of procedure in case it is determined to slaughter an animal are as follows, the numerical headings have reference to the duties of the veterinarian and the letter headings have reference to the duties of the justice of the peace and the appraisers:

1. Quarantine the premises.
2. Call in consultation two veterinary surgeons, or two physicians, or if this is impossible, then two resident stock owners of the state.
3. Make a written order for the slaughter of the animal, which order must be endorsed by one of the consulting parties; sufficient number of duplicates must be made that one may be given to each owner and one to the justice. The original order must be filed with the secretary of state by the veterinarian.
4. Notify in writing the nearest available justice of the peace and give to him the duplicate orders for the slaughter of the animal.
 - a. The justice must appoint three disinterested citizens, stock owners in the neighborhood, as appraisers.
 - b. The appraisers must be sworn by the justice to make a true and faithful appraisement without prejudice or favor.
 - c. The appraisers must assess the value of each animal and give an accurate description thereof, giving all brands, ear marks, wattles, age, sex and class, as to whether American, half breed or Texan.
 - d. The appraisers must make written return of their appraisement to the justice, with a certified copy thereof for the owner of the stock ordered killed and one copy for the justice.
 - e. The justice must enter such report of the appraisers on his record and make an endorsement on each copy and on the original showing it to have been duly recorded.
 - f. The justice should return to each owner a copy of the appraisement and also one of the duplicate orders of the veterinarian, and give the original appraisement to the veterinarian.
5. The veterinarian must superintend the slaughter and destruction of the animal.

If the owner consents in writing to the slaughter, and agrees that the animal has no value, or a merely nominal value, no appraisement need be made nor need any consultation be had.

While the statute confers upon the state veterinarian by its terms the authority to kill animals that have merely been exposed to the disease,

and that have not yet actually contracted the disease, still in view of the fact that the person killing the animal is responsible to the owner for the value thereof, in case the owner is able to prove in an action instituted for damages, that the animal was not exposed or that the slaughter was not necessary, I cannot recommend that any animal be slaughtered unless it is actually afflicted at the time of the killing.

It has been said "that because the law authorizes the abatement of such nuisances in advance of a judicial adjudication of the fact of nuisance, yet they do not make the determination of the officials as to that fact conclusive, and only permit their acts, in abating the nuisance, to be justified by proof of the actual existence of such nuisance." There may be doubt as to whether an animal is a nuisance merely because it has been exposed to the contagion, and the question as to whether the animal has the contagion is always an open question which may be contested by the owner, and in such contest persons who are not veterinary surgeons or physicians may testify. I would, therefore, recommend that no animal be slaughtered unless it actually has one of the diseases named in the statute at the time of slaughtering, and it may be proper to remark that so far as the animals named in your letter are concerned the law applies with particular effect to the disease known as glanders.

Respectfully submitted,

ALBERT J. GALEN,
Attorney General.