

Stallions, Required to Have a Certificate of Examination. Same, No Certificate Required When Turned Out on Open Range by Owner.

Stallions shipped to this state to sell to persons for breeding purposes must have the certificate required by section 6 of the stallion law, and they are not exempt from such requirement by reason of the fact that the purchaser intends to turn the stallion upon the public range. If a person ships a horse himself to turn on the public range, he is not required to have said certificate.

Helena, Montana, March 10, 1910.

Prof. R. W. Clark,
Secretary, Stallion Registration Board,
Bozeman, Montana.

Dear Sir—

I am in receipt of your letter of March 7, in which you request an opinion upon the following question:

“Can a person ship stallions to this state in violation of this Act, because said stallions are to be turned upon the range? One person has done this and is now trying to sell them and thinks the law excepts him from prosecution?”

There seems to be a conflict between the provisions of sections 6 and 16 and the first part of section 15, of chapter 108, laws of 1909.

Section 6 provides that:

“Every person, firm or company importing any stallion or jack into the state of Montana for breeding purposes shall first secure a certificate,” etc.

And section 16 provides that:

"No railroad company, transportation company or common carrier shall transport into the state of Montana any stallion or jack unless accompanied by state or federal veterinary certificate, as provided in section 6."

On the other hand, section 15 provides that:

"No part of this act shall apply to stallions turned upon the open range."

In an opinion given to you on September 17, 1909, we held as follows:

"If stallions are shipped to Montana to sell to persons for use in breeding mares in this state, they are certainly shipped 'for breeding purposes.'"

Such opinion correctly states the law, in our judgment. Where the person, firm or company importing a stallion sells, or intends to sell the same for breeding purposes, it would make no difference in what manner the person purchasing such horse intends to use him for breeding purposes. The fact that the purchaser might intend to turn the stallion upon the open range for breeding purposes would not exempt the importer from having the certificate required by section 6.

On the other hand, we cannot totally ignore the plain provision of said section 15, but believe that the language there used should be given a strict construction, so as to carry out the apparent intent and purpose of the law as far as possible.

Therefore, in our opinion, if a person ships a horse to this state, not to sell, but for his own exclusive use upon the open range, that in such event he is not required to procure the certificate required in section 6.

On the other hand, if a person imports a horse himself and turns him on the open range for a period of time and then takes him up and offers him for sale for breeding purposes, then in our opinion, he would be required to procure a certificate from the stallion registration board of this state before he would have authority to sell such horses for breeding purposes.

Any other construction of the law would make it possible for the importer to evade the law by shipping a horse here and turning him out for a few days on the open range and then taking him up and selling him.

Very truly yours,

ALBERT J. GALEN,

Attorney General.