

Stallion, Recovery for Service of Unlicensed.

There can be no recovery for the service fee of stallion, unlicensed under provisions of Chapter 108, Session Laws of 1909.

Helena, Montana, November 4, 1910.

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

Dear Sir:—

I acknowledge receipt of your letter of yesterday, submitting for answer the following:

“If a person standing or using a stallion or jack for public service in this state shall fail to comply with the provisions of Chapter 108, Session Laws 1909, can he collect service fees?”

I have carefully examined Chapter 108 above referred to, and find that no mention is made therein as to service fees, so that it is necessary to look to the legislative intent as expressed in the act, and the construction placed by the courts of other states upon similar acts.

The statutes of the states of Iowa and Minnesota are similar to our provisions, except that in each of those states provision was made that no compensation could be recovered. For the purpose of construing our law, unimportant provisions may be eliminated, leaving as the important provisions the following sections:

Sec. 1. Every person, firm or company, standing or using any stallion or jack for public service in this state shall cause the name, description and pedigree of such stallion or jack to be enrolled by a stallion registration board, hereinafter provided for, and shall secure a license from said board as provided for in Section 3 of this act. All enrollment and verification of pedigree shall be done by said board.

Sec. 7. The owner of any stallion or jack standing for public service in this state shall post and keep affixed during the entire breeding season copies of the license certificates of such stallion or jack, issued under the provisions of this act, in a conspicuous place upon the main door leading into every stable or building where said stallion or jack stands for public service. Said copies shall be

printed in bold face and conspicuous type, not smaller than small pica, especially the words "pure bred," "grade," etc.

Sec. 9. Every bill, poster, or advertisement issued by the owner of any stallion or jack licensed under this act, or used by him for advertising such stallion or jack shall contain a copy of his license certificate and shall not contain illustrations, pedigrees or other matter that is untruthful or misleading.

Sec. 12. Any person or persons knowingly or wilfully violating any of the provisions of this act shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), or by imprisonment for not less than thirty days or more than six months, or by fine and imprisonment for each offense.

Also Section 15 provides the definition of what is meant by the term "standing for public service;" that is, it is the service of a stallion for a fee when said stallion is stood at one or more places for public use where in all more than five mares are served in one season.

Upon reading the foregoing sections it will be found that Section 1 requires that a license fee be paid and a certificate be procured by all persons who stand jacks or stallions for public service, and it is further provided (in Section 12) that any person knowingly and wilfully violating any of the provisions of the act shall be punished as therein specified.

In reading this act, and in particular with reference to Section 13 thereof as to the disposition of funds received from license fees, it will be seen that this is not a statute for revenue, but rather a statute to protect horse owners, and one enacted on the ground of public policy.

In the case of Buckley v. Humason, a Minnesota case reported in 52 N. W., 385, this rule is quoted:

1. "When the question is whether the contract has been prohibited by statute it is material, in construing it, to ascertain whether the legislature had in view solely the security and collection of revenue, or had in view the protection of the public from fraud in contract, or the promotion of some object of public policy. In the former case the inference is that the statute was not intended to prohibit contracts, in the latter that it was.

2. "That in seeking for the meaning of the law referred to it is material also to inquire whether the penalty is imposed once for all on the offense for failing to comply with the requirements of the statute, or whether it is a recurring penalty repeated as often as the offending party may have dealings. In the latter case the statute is intended to prohibit contracting, and the contract is, therefore, void."

In the case of Smith v. Robertson, a Kentucky case, reported in 50 S. W. 852, which is a case involving the same question which you submit, the state of Kentucky had a law similar to our law requiring license for a stallion standing for public hire, and a further provision

almost identical with our Section 8602 of the Revised Codes, which section reads as follows:

Sec. 8602. "Every person who commences or carries on any business, trade, profession, or calling, for the transaction or carrying on of which a license is required by any law of this state, without taking out or procuring a license prescribed by such law, is guilty of a misdemeanor."

The Kentucky court in construing such statute said:

"It will be seen from this statute that a person furnishing the service of an unlicensed stallion for hire or compensation would be liable to indictment and subject to a fine for each offense. Each contract or service so rendered or performed would evidently be a separate offense, hence it seems that such action would bring the offending party within the rule above announced."

And the general rule seems to be that when the statute forbids a particular business generally, or to unlicensed persons, any contract made in such business by one not authorized, or made with a view of violating the statute, is void.

This rule is further supported by the cases of

Wood v. Armstrong, 56 Ala. 150, 25 Am. Rep. 671.

VanMeter v. Spurrier, 94 Ky. 22.

In the case last above cited the court, in construing a provision similar to ours; that is, in a case wherein it was necessary for a person selling fertilizer to procure a certificate and license therefor, the court said:

"The main question is whether the contract sued on is by reason of such noncompliance with or disregard of the statute, void or unenforceable. It is too well settled for argument that a contract prohibited by statute will not nor should be enforced by the courts. There is a marked difference between a statute, the prime and sole purpose of which is to secure or raise revenue by license tax, and one enacted to protect the public against fraudulent sale of goods, or for other reasons of public policy; that the penalty implies a prohibition in such cases as this, though there be no prohibitory words in the statute, has been decided by numerous courts."

Quoting again from the case of Wood v. Armstrong, above quoted:

"From an early period of the history of this country, persons desiring to stand a stud horse were required to obtain a license and a penalty denounced against them for engaging in such business without a license, and it can hardly be assumed that the sole purpose was to raise revenue, but manifestly one of the objects was to encourage men to procure and stand a superior breed of horse by excluding owners of inferior stock from engaging in such business, unless they would, in like manner, procure a license, it being a reasonable presumption that the owner of inferior stock

would hardly be able to obtain custom sufficient to justify him in licensing his horse."

Also, in the case of *Davis v. Randall*, 97 Me. 36, it is held:

"The owner of a stallion who fails to file a certificate as required by law, cannot recover any compensation for the service of such stallion."

While our statute is rather ambiguous in some respects, I believe, however, the courts would construe it in the same manner as in those cases above cited, and I therefore give it as my opinion that no compensation can be recovered for the service of a stallion without his owner or keeper has procured a license and certificate as required by law.

Yours very truly,

ALBERT J. GALEN,

Attorney General.