

Dairy Cattle, Payment For. Tuberculosis Cattle, Payment For. Slaughtered Cattle, Payment For. Stock Commissioners, Payment of Claim of Special Prosecutor. Special Prosecutor, Expenses Of. Appropriation, Special Prosecutor, Use Of.

There is no provision contained in Chapter 146, Laws of 1911, for the payment by the state of dairy cattle slaughtered by the state veterinarian.

The special prosecutor appointed by provisions of Chapter 17, Laws of 1911, is entitled to recover his actual and necessary expenses incurred in the performance of his duty within the limit of the appropriation made by the legislative assembly for that purpose. The special accountant is not entitled to extra compensation beyond the amount of his appropriation unless his services were performed necessarily for the special prosecutor and the payment is made out of the appropriation to such special prosecutor.

November 24, 1911.

State Board of Examiners,
Helena, Montana.

Gentlemen:

I am in receipt of your communication of the 20th inst., in which you submit to this office for examination and opinion the claim of J. Eraerts for value of a cow killed by the state veterinarian as being affected with tuberculosis and in which no lesions of tuberculosis were found on autopsy.

Also the claim of Geo. E. Hurd, special prosecutor, in the investi-

gation of the affairs of the state board of stock commissioners, in which claim appears two items for payment of certain amounts to J. W. Dawson, accountant.

As to the claim of J. Eeraerts, it is apparent that the animal killed for which he makes claim was slaughtered by the state veterinarian under the provisions of Chapter 146, Laws of 1911, which provides for the slaughtering of dairy cattle suffering from tuberculosis. Said Chapter 146 makes no provision for the payment for any stock slaughtered under the authority of the Act., and it is my opinion that there being no provision of law for the payment of the claim of Mr. Eeraerts that the board of examiners has no authority to allow the same, but that the same might be a proper matter to be referred by you to the legislative assembly.

As to the claim of Geo. E. Hurd, special prosecutor, for expenses, I would respectfully call your attention to the provisions of Sec. 4, Chapter 17, Laws of 1911, which provides that said special prosecutor shall receive—

“as full compensation for his services as such including salary of any stenographer said special prosecutor may employ and all actual and necessary expenses incurred in the performance of his duty.”

a certain sum therein specified.

Said Sec. 4, further provides that the special accountant therein named shall receive for his services including all actual and necessary expenses a certain sum therein specified for the entire time he is employed as such accountant. Also by the provisions of Senate Bill No. 151 found at page 541, Laws of 1911, an appropriation of \$8000 is made to cover the salary and expenses of the special prosecutor and an appropriation of \$2000 is made to cover the expenses and salary of the special accountant. From your letter I note that the full amount of the appropriation for the special accountant has been exhausted. If the services performed by Mr. Dawson were performed strictly in accordance with his duties as special accountant in accordance with the provisions of Chapter 17, Laws of 1911, then it is my opinion that in view of the fact that the appropriation of \$2,000 for such special accountant has been exhausted, that no further sums may be paid to said accountant. However, if the services performed by Mr. Dawson were performed at the request of the special prosecutor and were actual and necessary expenses incurred by such special prosecutor in the performance of his duties as prescribed in said Chapter 17, Laws of 1911, then the items may properly be allowed to Mr. Hurd as his actual and necessary expenses, and the amounts, of course, would be deducted from and paid out of the appropriation made to cover the fees and expenses of said special prosecutor.

I return you herewith claims presented.

Yours very truly,

ALBERT J. GALLEN,

Attorney General.