

**Lost Property, Duty of Finder. Animals, Lost, Duty of Finder.**

A person finding lost property has no right to advertise it for sale or dispose of it to defray the cost of caring for it, but he may by proceeding under provisions of Sec. 1996 to 2002, inclusive, Revised Codes, recover a reasonable charge for costs or acquire title to the property.

December 4th, 1911.

Hon. Justin M. Smith,  
County Attorney,  
Bozeman, Montana.

Dear Sir:

I am in receipt of your letter of November 25th, wherein you state that you are continually being confronted with the question as to the right of a person to take up, feed and care for a lost or stray horse, cow or other domestic animal where the owner is unknown and then advertise and sell it to pay the cost of feeding and caring for it, and requesting my official opinion as to whether or not this may legally be done.

Sections 1820 et seq. Revised Codes, permit persons or associations shipping cattle from this state, to ship with their own cattle, estrays which may be among them upon complying with the statute; and under the provisions of Chapter 2, Session Laws of 1911, the proceeds derived from the sale of all stray cattle or horses sold either within or without the state are required to be at once transmitted to the state treasurer and paid to the owner of the recorded brand upon the request of the secretary of the state board of stock commissioners, after the approval of the state board of examiners. These statutes, however, have nothing to do with caring for lost or stray cattle, the owner of which is unknown.

Chapter 19, Session Laws of 1903, defining the word "estrays" and providing a penalty for the taking up using or disposing of estrays upon the public domain was held unconstitutional by the supreme court of this state in the case of *State vs. Cunningham*, 35 Mont. 547, but prior to this decision, this office rendered an opinion to Honorable T. J. Porter, county attorney. Miles City, Montana, (Opinions Attorney General 1905-06, p. 290.) in which it was held that said Chapter 19, Laws of 1903, amended by implication all prior laws relating to a lost or stray domestic animal found on the public range. After said

Chapter 19, had been declared unconstitutional, this opinion, of course, had no further force or effect and the law remained the same as before the enactment of Chapter 19.

In 1909, Chapter 126, Session Laws of 1909, was enacted which chapter provides that any person,

"Who shall take up or retain in his possession any mare, gelding, colt, foal, filly, mule, jack or jennet, the owner of which cannot with reasonable diligence be found, or of which he is not the owner, without the owners knowledge or consent, or who shall in any manner restrain from liberty for the purpose or purposes of using or making use of such animal without the knowledge and consent of the owner, shall be guilty of a misdemeanor."

This chapter simply prevents the taking up or restraining the animals mentioned therein for the purpose of using them without the owners knowledge or consent and has no reference to feeding or caring for lost or stray animals which are in distress or which require feed or shelter.

The only remaining provisions of our Code touching the question at issue are sections 1996 to 2002, Revised Codes of 1907.

Under the provisions of these sections:

If any person find any money, goods, things in action, or other personal property, or save any domestic animal from drowning, or from starvation, when such property is of the value of ten dollars or more, he must inform the owner thereof, if known, and make restitution without compensation further than a reasonable charge for saving and taking care thereof but if the owner is not known to the party saving or finding such property, he must, within five days, make an affidavit before some justice of the peace of the county, stating when and where he found or saved such property, particularly describing it, and if the property was saved, particularly from what and how he saved the same, stating therein whether the owner of the property is known to him, and that he has not secreted, withheld, or disposed of any part of such property.

The justice must then summon three disinterested householders to appraise the same. The appraisers, or any two of them, must make two lists of the valuation and description of such property, and sign and make oath to the same, and deliver one of the lists to the finder and the other to the justice of the peace.

The justice must file such list and the finder must transmit a copy of the same to the county clerk of the county, who must record the same in a book known as the "Estray and Lost Property Book," within fifteen days, and the finder must at once set up at the court house door and four other public places in the township or city a copy of such valuation and a description of property.

If no owner appears and proves the property, within six months, and the value thereof does not exceed twenty dollars, the same vests in the finder, but if the value exceeds twenty dollars the finder must within thirty days after setting up the list mentioned in the preceding

section cause a copy of the description to be inserted in some newspaper printed in the county, if there be one, and if not, in some newspaper printed in the state, for three weeks and if no owner prove the property within one year after such publication it vests in finder.

If, within one year, an owner appears and proves the property and pays all reasonable charges, including fees of officers, the finder must restore the same to him. On failure to make restoration of such property, or the appraised value thereof, on being tendered such charges and fees, the owner may recover the same or the value thereof by civil action in any court having jurisdiction.

If any person find any money, property or other valuable thing, and fail to make discovery of the same as required by this article, he forfeits to the owner double the value thereof.

The proof required by this article must be made before the county clerk, with whom the list provided for herein is filed, and if he is satisfied therefrom that the person claiming to be, is the owner, he must certify that fact under his hand and seal.

You are, therefore, advised that a person finding lost property or saving any domestic animal from drowning or starvation, has no right to advertise it for sale or dispose of it to defray the cost of caring for it but he may by proceedings as above outlined recover his reasonable charges and costs or acquire title to the property.

Yours very truly,

ALBERT J. GALEN,

Attorney General.