

Stray Cattle, Shipment Of. Cattle, Inspection Of. Inspection, of Cattle. Stock Inspector, Duty Of. Strays, Authority to Ship. Estrays, Shipments Of.

There is no authority of law for the shipment of stray cattle to a market other than one at which the state board of stock commissioners maintain an inspector.

Upon inspection of cattle for shipment to a point outside of the state where no state inspector is maintained, the local inspector has authority to pass upon shipment if in his opinion the person about to ship the stock is the owner of or entitled to ship such cattle.

December 23, 1911.

Mr. D. W. Raymond, Secretary,
State Board Stock Commissioners,
Helena, Montana.

Dear Sir:

I acknowledge receipt of your letter of the 19th inst., wherein you request my official opinion upon the following state of facts relative to the shipment of stray cattle. You state that several shipments of cattle are being made to a number of points where the state board of stock commissioners are not represented by a state stock inspector.

That in several instances of such shipments, a local stock inspector has found among the cattle sought to be shipped, stray cattle or cattle bearing other brands than that owned by the shipper, and you desire to know what is to be done with such stray cattle and whether such animals may be allowed to go with the shipment, and if not, what disposition is to be made of them. And you also state that strict enforcement of the rule to allow no strays to be shipped to points other than where you maintain inspectors, would cause great inconvenience.

By the provisions of Sec. 1820, Revised Codes:

“Every person, agent, firm, corporation, pool or roundup association who shall ship cattle from this state may ship with their own cattle any strays which may be among them.”

But provision is made in the same section for an accurate tally of the brand of the cattle in such shipment whether their own or strays and such section further provides that one copy of such tally shall be deposited with the railroad agent at the point of loading and subsequently forwarded to the state board of stock commissioners at Helena, and that another copy shall be immediately mailed to the state stock inspector at the point of destination. This section 1820 apparently gives authority to a person to ship with his own cattle, stray cattle that may be among them, but in view of the provision of said section requiring a copy of the tally list to be mailed to the state stock inspector at the point of destination, it is my opinion that the authority of one person to ship with his own cattle the cattle of another person—as strays, such shipment must be consigned to a destination at which the board of stock commissioners maintain a state stock inspector, and that in case such shipment is destined to a point where no such inspector is stationed, that no right is given to any person, firm, corporation or roundup association to ship other than their own cattle, or cattle which they may be authorized to ship by a true owner.

By the provisions of Chapter 19, Laws of 1903 the Legislature undertook to define a “stray” but said act of 1903 was declared unconstitutional by the Supreme Court of this state in the case of State vs. Cunningham, 35 Mont. 547, and since that time there is no statutory definition of the word “stray” in this State.

Sections 1812, 1813 and 1814, provides for the inspection of cattle to be removed or shipped from the state other than the cattle which shall be loaded for shipment and consigned to a point where the state board of stock commissioners maintain a stock inspector. These sections provide for the inspection of such cattle by the local stock inspector and by the provisions of Sec. 1813 he is given discretion in passing upon such shipment. The section providing in part,

“If, in the opinion of the stock inspector the person proposing to remove the same, is rightfully in possession of the animals inspected, he shall grant such person a certificate of inspection.”

and said section further provides in part;

“If, however, any stock inspector making such inspection

shall be in doubt as to whether any of said stock is rightfully in possession of the person proposing to remove the same from this state, he shall withhold such inspection certificate until satisfied that the said shipper is in rightful possession of such stock."

From these provisions it will be seen that a large discretion is given the stock inspector in passing the shipment and each shipment will necessarily be governed by the facts and circumstances surrounding it. Taking into consideration the shipper, his standing in the community and his responsibility, so that, irrespective of whether the cattle offered for shipment bear the brand of the shipper or bear the brand of some other person, the shipment may be passed upon by the stock inspector if he is satisfied that the person proposing to remove the same is rightfully in possession of the animals inspected. A recorded brand is not conclusive evidence of the ownership of the animal bearing such brand, but in my opinion is merely presumptive evidence of such ownership and it is not only possible but quite usual that the ownership of a brand upon an animal may be in one person and the ownership of the animal itself in another.

You state further in your letter that in case the shipper is not the owner of the brand borne by the animal and for that reason the inspector withholds his certificate of inspection; that the animals are then turned loose at the point of shipment and a great distance from a feeding point "to become the prey of rustlers." I cannot see that this is a necessary consequence of such action. Sections 8858 and 8860, make it an offense for any person other than the owner of cattle to drive them from their usual and customary range farther than the nearest corral, and it is contemplated by said section that the animals of which such person is not the owner, should be cut out and immediately returned to their accustomed range and if any person should drive to a shipping point, animals of which he was not the owner or to the possession of which he is not entitled in my opinion he would be acting in violation of the provisions of sections 8858 and 8860, in case he did not immediately return them to their usual and customary range, the place from which he obtained them.

Yours very truly,

ALBERT J. GALEN,

Attorney General.