

State Veterinarian, Power of to Destroy Horses Condemned for Slaughter. Horses Affected With Dourine or Glanders, Power of State Veterinary Surgeon to Destroy.

Section 1889, Revised Codes, provides the classes of animals which must be slaughtered, and which class may be slaughtered only after notice to the owner thereof.

Section 1890, Revised Codes, provides the procedure to be followed by the veterinary surgeon in slaughtering animals of either class.

In determining whether he should quarantine diseased animals, or slaughter same forthwith, the state veterinarian should be governed by the rules and regulations of the state sanitary board.

May 14th, 1913.

Dr. W. T. Butler,
State Veterinary Surgeon,
Helena, Montana.

Dear Sir:

I beg to acknowledge receipt of your communication under date the 12th instant, to the following effect:

"I would like an opinion from you as to whether or not the state veterinary surgeon has power to destroy without the owner's consent horses condemned for slaughter for dourine or glanders.

"I desire this opinion as some owners, out of contrariness, will not sign a release. This necessitates the strict quarantining of their animals. It also necessitates probably two or three trips to where the horses are quarantined. As you can readily see, this makes an unnecesary expense upon our department.

"It is also difficult for us in some instances to know whether or not the quarantine is observed."

In reply thereto, I call your attention to Sec. 1889 of the Revised codes, providing:

"Two classes of animals must be slaughtered: (1) animals determined by either the state veterinary surgeon or deputy, to be affected with disease requiring slaughter, * * * (2) animals so exposed to disease as to require their slaughter as a sanitary safeguard."

The above section further provides that:

"Animals of the second class shall only be killed after notice, save those animals not in the direct custody of any person, and whose owner is either unknown or resides so far away as to make immediate notice impracticable." Sec. 1889, R. C.

Sec. 1890 of the Revised Codes prescribes the procedure to be followed by the veterinary surgeon in slaughtering animals of the first class when notice is required, and also prescribes the procedure to be followed when slaughtering animals of the same class "without notice." It thus appears that the statute contemplates that animals of the first class, viz., animals determined by either the state veterinary surgeon or deputy to be affected with disease requiring slaughter, may in some instances be killed only after notice to the owner, and in certain other instances may be killed without notice. The statute does not state when the notice will be required, and when it will be dispensed with in the slaughtering of animals in the first class. Sec. 1888 of the Revised Codes, however, declares the powers and duties of the state veterinary surgeon and sanitary board, and provides that it shall be their duty "to direct and regulate the slaughter of all diseased animals." (Sec. 1888, R. C., Subdiv. 6.) I am of the opinion that under this provision of the statute the board has authority to determine when animals of the first class, defined in Sec. 1889, may be killed without notice to the owner and when notice to the owner will be required before slaughtering. In either case, I am of the opinion that the animal may be slaughtered without the consent of the owner. But in cases where the state sanitary board by its rule or regulation requires notice to the owner to be given, the owner may dispute the existence of the disease, and fix the time of killing the animal, which must not be later than 136 hours after the service of the order requiring the animal to be slaughtered. (Sec. 1890.) On the other hand, if the state sanitary board directs the veterinary surgeon to cause horses affected with dourine or glanders to be slaughtered forthwith, without notice to the owner, in such cases the veterinary surgeon may kill the animal without delay and without waiting for the protest of the owner or permitting the owner to fix the time for slaughter.

You are therefore advised that in determining whether you should quarantine the diseased animals or slaughter same forthwith, you

should govern yourself by the rules and regulations of the state sanitary board.

Very truly yours,

D. M. KELLY,
Attorney General.