

**Estrays, Disposition of. Estrays, Power of Stock Inspector Over. Stock Inspectors, Authority Over Estrays.**

The rights of private persons who come into the possession of estrays are defined by Sections 2091 and 5805, Revised Codes.

The provisions of Section 1820, Revised Codes, referring to shipments of stray cattle does not confer upon stock inspectors the authority to ship stray cattle being held by private persons under the provisions of Sections 2091 and 5805.

April 2, 1914.

Hon. D. W. Raymond,  
Sec'y. Board of Stock Commissioners,  
Helena, Montana.

Dear Sir:

I am in receipt of your communication under date of March 25th, 1914, enclosing letter from B. E. Zachery, stock inspector of Yellowstone County, in which he asks for some information as to the proper disposition of stray animals taken up by farmers and ranchers and as to his jurisdiction in those matters. The question of estrays and their disposition are touched upon in an opinion to yourself, under date of July 15, 1911, found at page 223, Vol. 4, Opinions of Attorney General. The various portions of the Code, dealing with the subject of Mr. Zachery's letter are Section 2091 and 5805, Revised Codes. Section 2091, a portion of the law relating to fences in this state, provides that trespassing cattle may be held for damages and for the expense of keeping and feeding them, and provides for the posting of notice where the owner of such cattle is not known. There seems to be no provision made for a sale of such animals in order to realize the amount due for damages, keeping and feeding. Section 5805 of the Revised Codes, gives to

ranchmen, farmers, agisters, etc., a lien upon livestock in their possession in certain instances, and provides that this lien may be enforced as in cases of pledge. That is, a sale of the property may be made to raise the amount of the lien. Sections 5788, 5789, 5790 and 5793, gives the procedure for the sale of property pledged. The facts stated in Mr. Zachary's letter are hardly full enough to make it known which one of these Code provisions above referred to, would be applicable.

Coming now to the question of the authority of a stock inspector to take possession of cattle which has come into the hands of ranchmen or farmers as trespassers, and which ranchmen or farmers are holding, under the provisions of Section 2091 or 8805, I find no authority in the law given to stock inspectors to take such animals into their possession. Their jurisdiction in the matter would only go so far as to investigate the question of whether a larceny of livestock has been committed. This would not give them authority to take possession of the animal, however, or to ship it as an estray. Section 1820, which refers to the shipment of estray cattle, deals only with stray cattle found in herds belonging to other shippers or roundup associations at the time the shipment was to take place. It could not apply to the facts in this case, because no shipment of the animal was made or attempted.

Yours very truly,

D. M. KELLY,  
Attorney General.