

Estrays, Manner of Sale of. Sale of Estrays, How Made. Animals, Estrayed Sale of in What Manner.

Law relating to disposition and sale of estray animals examined and construed.

May 13, 1916.

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

Dear Sir:

I acknowledge receipt from you of your correspondence with Mr. B. E. Zachary of Billings, Montana, relative to the sale and disposition of certain estray animals found in his district. The provisions of Chapter 34 of the Laws of 1915, are very specific, and you are fully justified in the stand that you have taken in following the specific directions there given. The law in its operation may in some instances be found to entail what seems to be unnecessary expense, yet when specific directions are given, it is not safe to depart therefrom, even though in the particular instance, justice would seem to be better subserved by modifications of the directions contained in the law. It must also be kept in mind that Chapter 34, Laws of 1915, is an original enactment, and takes precedence over all other laws. Hence, the publication required by Section 2 of the Act must be had. This law does not commend that the sale shall be at the place where the animal is found, but it does command that a notice specifying the time of sale be given. Of course, business judgment seems to dictate that the sale at public auction should be held at a place where prospective purchasers attend. But a notice that is given as specified in said Section 2, can specify the public horse market at Miles City, where the stock to be sold is horses, as well as any other place. Section 2 of this Act seems to contemplate that the estrays shall be held in the *possession* of the inspector for not less than thirty days, for the purpose of enabling the owner to inspect and reclaim the same. At the end of the time, the horses may then be sent to the public market at Miles City for sale, and while the business of the sale may not enable them to be sold at the precise time named, the sale would simply be adjourned and continued over until it could be reached; the owner in the meantime, at any time prior to the actual sale, would have the right to claim his stock. Hence, he would not be injured by the little delay, if any, incident to the business of the sale.

Yours very truly,

J. B. POINDEXTER,
Attorney General.