

**Sheep—Estray Sheep—Authority of Live Stock Commission to Proceed Against Estray Sheep—Live Stock Commission.**

The Live Stock Commission is without authority to proceed against estray sheep in any manner.

Dec. 14th, 1917.

Mr. D. W. Raymond, Secretary,  
Livestock Commission,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter of recent date submitting the following questions:

"1. Is there such a thing as a stray sheep under the Montana laws?"

"2. What can be done with sheep of unknown ownership?"

Section 1, Chapter 34, Laws of the Fourteenth Legislative Assembly, authorizes the State Board of Stock Commissioners to take possession of any and all estrays found running at large within the state. Sections 2, 3 and 4 of said Act provides the manner of handling and disposal of such estrays, but the provisions of Section 5 of said Act defines the word "estrays" to be, "any horse, mule, mare, gelding, colt over one year old, cow, ox, bull, stag, steer, heifer or calf, over one year old, not bearing a brand, and the ownership of which cannot be determined by the stock inspector \* \* \*"

There is no other statute giving the Stock Commission authority regarding estray stock.

I am, therefore, of the opinion that your commission is without authority to in any manner proceed against estray sheep.

Section 2090 of the Revised Codes of 1907, provides "If any sheep break into any enclosure, the fence being legal, as hereinbefore provided, the owner of such animal is liable for all damages to the owner or occupant of the enclosure which may be sustained." This section must not be construed so as to require a legal fence in order to maintain an action for injury done by animals running at large contrary to law.

Section 2091 provides that if any animal breaks into an enclosure surrounded by a legal fence, or is wrongfully upon the premises of another, the owner or occupant of the enclosure or premises may take into his possession the animal trespassing, and keep the same until all damages, together with reasonable charges for keeping and feeding are paid; that within twenty-four hours after taking such animal into his possession, the owner or occupant must give notice to the claimant of the animal that he has taken up the animal, if known, or if unknown, he must post a like notice at some public place near the premises.

Estray sheep should be handled as provided in said sections.

Respectfully,

S. C. FORD,  
Attorney General.