

Indians—Livestock—Cattle—Compensation.

Where livestock belonging to Indians is slaughtered by order of the livestock sanitary board, whether within or without an Indian reservation, the owner of the cattle is entitled to state and county compensation, to be fixed as provided by section 3271 R. C. M. 1921.

November 12, 1927.

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

My dear Doctor Butler:

You have requested my opinion whether under the laws of Montana Indians owning livestock ordered destroyed by your department or the United States bureau of animal industry, cooperating with the state of Montana in the eradication and control of livestock diseases, are entitled to state and county indemnity.

It is my understanding that where animals are slaughtered by the United States bureau of animal industry in cooperation with your department it is done by the joint authority of the two departments; hence, the owner of the cattle has the same right to compensation from the state as he would have had if the animal had been slaughtered by order of your department only. Therefore, the cooperative feature of your inquiry does not, in my opinion, affect in any way the matter of right to compensation.

Section 3267 of the code empowers the livestock sanitary board to slaughter diseased cattle and "to indemnify the owner of any property destroyed by the order of the board, or its authorized representatives, under the provisions of this act."

Section 3271 provides the classification of animals as to compensation for slaughter.

Section 3278 reads in part as follows:

"The owner of any animal or property destroyed, as provided in this act, shall be entitled to indemnity therefor as herein provided, except in the following cases."

The section then enumerates some eight exceptions to the act, none of which include property owned by Indians or indicates any intention to except such property from compensation.

It is my opinion that under the statutes above quoted the property of an Indian is on the same basis as that of any other person with regard to the right of the owner to be compensated for the slaughter of his cattle by authority of the state.

Independent of statutory authority, and as a matter of justice and equity, I know of no reason why any difference should exist in that respect between an Indian and a white citizen of the United States. I

know of nothing in the tribal status of Indians that could properly exclude them from the same right as other persons to compensation for the taking and destroying of their property under the police power of the state.

It is therefore my opinion that your inquiry must be answered in the affirmative. The above conclusion would apply equally to cattle within and without an Indian reservation. The only difference that would result from the fact that the cattle were slaughtered on an Indian reservation would be that there might be some difference in the amount of compensation to be paid, depending on whether or not the animal had been previously assessed for taxation.

In the case of tribal herds which are not assessed for taxation compensation would necessarily have to be paid on the basis of subdivision 4 of section 3271.

Very truly yours,

L. A. FOOT,
Attorney General.