

Herd District—Animals—Detention—Corral.

Whether trespassing animals in a herd district may be placed in a common pound or pasture depends upon the circumstances in each particular case as pointed out in the opinion.

Mr. Paul Raftery, March 21, 1931.
Secretary, Montana Livestock Commission,
Helena, Montana.

My dear Mr. Raftery:

You have requested an opinion whether under the provisions of code section 3386 one taking up trespassing animals in a herd district may place them in a common pound or pasture or whether he must keep them on his own land.

This section provides as follows:

“The owner or the occupant of the land upon which such wrongful entry is made may take into his possession such animal or animals and shall reasonably care for the same while in his possession, and may retain possession of said animal or animals

and shall have a lien and claim thereon as security for payment of such damages and the reasonable charges for the care of said animal or animals while in his possession.”

It is fundamental law that one may maintain possession through his agent and there is no provision in the act apparently which requires that the one taking up animals must keep them on his own land.

You are accordingly advised that one taking up trespassing animals might hold them on premises other than his own, through his agent, and that there is no reason why the agent might not also be the agent of others for the same purposes. However, the possession of the animals by the owner of the land, or of his agent, must always be referable to the right of detention granted by the law, which is as security for the payment of the damages caused by the trespassing animals. If they were driven needlessly to a distant place of detention, thereby rendering it a hardship upon the owner to regain possession of the animals when they could reasonably have been detained and given reasonable care at the place where they were taken up, or, if not, at a place more convenient for the owner to regain possession such action could be construed as having been taken to vex and annoy the owner of the animals rather than as being necessary for their detention and reasonable care, in which event the person would lose his right to detain them because his possession would no longer be referable to his legal right of detention.

Furthermore, the owner of the animals is entitled to have them delivered to him at the place where they were taken up unless he agrees to take delivery elsewhere upon payment of the damages or issuing of a receipt for the animals as provided in section 3886. He could not be compelled against his wishes to go to a distant place to receive them. Should delivery be refused upon tender of payment or the issuing of the receipt the right to hold the stock would be lost and a continued detention would render the person liable for conversion thereof.

Therefore, whether in a particular case a person taking up trespassing animals can impound them in a central corral maintained for that purpose, depends upon the particular facts in each case and the consideration of questions of the above nature involved therein.

Very truly yours,

L. A. FOOT,

Attorney General.