

Opinion No. 177.**State Veterinary Surgeon—County Commissioners—Livestock.**

Held: That the county commissioners have no authority to disagree with the appraisal by the state veterinary surgeon or his deputy or agents of stock ordered to be destroyed under the provisions of Sections 3271-3279, Revised Codes of Montana, 1935, as amended, unless the appraisal is in excess of the maximum set forth in the statutes.

February 21, 1944.

Dr. W. J. Butler
State Veterinary Surgeon
Livestock Sanitary Board
Helena, Montana

Dear Dr. Butler:

You have requested an opinion from this office as to whether the county commissioners may disagree with the appraisal put on stock ordered destroyed by the deputy state veterinary, while acting on behalf of the Livestock Sanitary Board, under Sections 3271-3279, Revised Codes of Montana, 1935, as amended by Chapter 177, Laws of 1937, and Chapter 75, Laws of 1943.

Section 3271, Revised Codes of Montana, 1935, as amended by Section 1 of Chapter 75, Laws of 1943, provides in part as follows:

"Animals determined by the state veterinary surgeon or by a deputy state veterinary surgeon to be affected with an incurable disease which are destroyed by order of such officer . . . The county in which such animal was owned at the time it was determined to be affected with an incurable disease . . . shall be liable in part, as hereinafter provided, for any indemnity to be paid for such animal . . . (provides method of appraisal and amount to be paid. Provides in paragraph number 3 for same procedure and appraisal of stock affected with or exposed to a disease which is not necessarily fatal, except in those instances full appraised price is paid, within limits set.)"

Section 3273, Revised Codes of Montana, 1935, provides for indemnity and from what funds paid, as follows:

"In payment for animals or property destroyed by order of the livestock sanitary board, the state shall pay one-half of such indemnity out of any moneys at the disposal of the livestock sanitary board, and the county liable in part for the indemnity, as such county is determined by this act, shall pay the one-half part of such total indemnity out of the general fund of the county."

Section 3279, Revised Codes of Montana, 1935, as amended by Section 3 of Chapter 75, Laws of 1943, provides as follows:

"In all cases where the federal government or agency other than the state or county, shall compensate the owner in whole or in part for livestock or property destroyed by order of the Montana livestock sanitary board, then the amount of such compensation from the federal government, or other agency, shall be deducted from the amount of compensation or indemnity, which otherwise would be payable by the state and any county, provided herein for such animal or property destroyed; and provided further, that where the owner or agent of such livestock or property destroyed by order of the Montana livestock sanitary board shall forfeit any indemnity which the owner would otherwise be entitled to from the federal government, or other compensating agency than the state or county, by violation of the regulations of the federal government, or other agency, then and in such case an amount equal to the indemnity which would have been paid, but for the forfeiture, by the federal government, or other indemnifying agency, shall likewise be deducted from the payment required by this act from the state and county for the destruction of such animal or property."

Section 3274, Revised Codes of Montana, 1935, as amended by Section 4 of Chapter 75, Laws of 1943, provides in part as follows:

"Claims against the state and any county thereof arising from the destruction of animals or property destroyed by order of the Montana livestock sanitary board, shall be made upon official forms as provided by the Montana livestock sanitary board

which must contain an affidavit by the owner or his agent with knowledge of the facts of such animal or property certifying to the ownership of such animal or animals or property and the county in which they are owned, and that such animal or animals have been destroyed and the property destroyed, as the case may be, in accordance with the law, and the regulations of the Montana livestock sanitary board; and such claims must be accompanied by a certificate from the state veterinary surgeon or his authorized deputy or agent that such animal or animals or property, as the case may be, were ordered destroyed. Such claim shall likewise be accompanied by a certificate of appraisement as such appraisal is determined under Section 3271, together with an account of sale showing the net proceeds from the sale of the animal, if any, paid to the owner of the animal."

The above portion of said Section 3274, as amended, pertains to the general conditions. There are special instances where the county is not liable but such instances are so unmistakable that they need not be considered here.

The State Livestock Sanitary Board is set up under the police powers of the State of Montana, and therefore has authority to order such things done, as may be, in the determination of the board, necessary to the health of the State of Montana. See in this respect 3 Corpus Juris at page 50, as follows:

"The authority of the legislature to enact laws for the protection of domestic animals, and to prevent the spread of infectious or contagious diseases among them, is everywhere recognized as a valid exercise of the police power of the state."

See also, Vol. 2 American Jurisprudence at page 811. *Durand et al v. Dysen*, 111 N. E. Ann. Cas. 1917D 84, and note at page 89.

By Section 3273, Revised Codes of Montana, 1935, the county is made liable for one-half the total indemnity, subject however, to the provisions of Section 3279, Revised Codes of Montana, as amended by Chapter 75, Laws of 1943, which allows credits for payments made by the government and proceeds of sale of such animals, if any. By these statutes there is a direct

obligation made by law on the county. Section 3274, Revised Codes of Montana, 1935, as amended by Chapter 75, Laws of 1943, definitely states how claims shall be presented and does not provide for any discretion on the part of the county in making payments. The only duty of the county commissioners under these statutes is to see that the claim is correctly presented and that it is not larger than allowable under the law.

The courts of the state of Kansas, Tennessee and Texas have passed on the conclusiveness of the appraisal on the county commissioners and in such cases it has been held that the appraisal is conclusive. See *Cory v. Graybill*, (Kansas) 749 Pac. 417, at page 420:

"The Legislature has laid upon the livestock sanitary commissioner the duty and the responsibility of determining the facts upon which the liability of the state to indemnify an owner depends; and in the absence of fraud, collusion, or similar misconduct on the part of an owner or of the livestock sanitary commissioner, it is a duty of the board of county commissioners, on presentation of a certificate in due form, to draw its warrant on the county treasurer for the amount therein stated."

Also, in the same case, near the bottom of column two on said page 420, the following statement commences:

"So long as the appraisement is the result of an effort made in good faith to determine the value of the condemned animal or animals at the date of the appraisement, the certificate or order issued by the livestock commissioner is conclusive on the board of county commissioners."

The Texas Court in *Hill County v. Hamilton*, 273 S. W. 292, at page 293, states as follows:

"If animals in his county are reported to be infected with glanders and have been quarantined by order of the Livestock Sanitary Commission, it becomes the duty of the county judge to appoint three disinterested parties to appraise and fix the value of said animals and make a sworn written report of said appraisement to the county judge, whereupon the commissioners' court shall pass upon such written report and pay to the

owner of the animals their appraised value. The only duty to be performed by the commissioners' court, it seems, is to pass upon the report; that is, see that the report is in proper form, sworn to, etc. They have nothing to do with fixing the value of the animals . . . and it is made the absolute duty of the commissioners' court to pay the owner of the animals their appraised value. (See also, *Lewis v. Shelby County*, (Tenn.) 92 S. W. 1098 and *Farmers & Merchants State Bank of Concordia v. Board of Commissioners of Cloud County*, 165 Pac. 870.)

It is therefore my opinion that the county commissioners of a county in the state of Montana, may not disagree with the appraisement made by the state veterinary surgeon or his deputy or agents, of stock ordered destroyed under the provisions of Section 3271-3279, Revised Codes of Montana, 1935, as amended by Chapter 177, Laws of 1937 and Chapter 75, Laws of 1943, unless such appraisement is greater than the maximum allowed by said statutes.

Sincerely yours,
R. V. BOTTOMLY
Attorney General