

Dear Dr. Butler

You have requested an opinion of this office as to the interpretation of Paragraph 9, Section 3278, Revised Codes of Montana, 1935, particularly as to the word "destroyed" and whether it means that the owner must have seen that the animal was actually destroyed within the sixty days or whether his disposal thereof entitled him to indemnity under Sections 3271-3279, Revised Codes of Montana, 1935, as amended, even if the person to whom he has sold or disposed of the animal has not killed the animal within sixty days. Also you request an opinion as to whether the sixty days commence to run from the time the Livestock Sanitary Board determines that the animal is diseased or from the time the owner is notified of such finding.

Section 3278, Revised Codes of Montana, 1935, provides in part as follows:

"Persons entitled to indemnity. 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 . . .

"9. When animals condemned are not destroyed within sixty days after they have been determined to be affected with or exposed to a disease which requires them to be destroyed by order of the livestock sanitary board."

In answer to your first question it is necessary to go into the definition of the word "destroy."

Funk & Wagnall's New Standard Dictionary defines destroy as follows:

"To put an end to the existence of; cause to cease to be; cut off; kill;"

Webster's New International Dictionary defines destroy as follows:

"To bring to naught by putting out of existence; to take the life of; to kill."

In Corpus Juris Secundum, Volume 3 at pages 1168 and 1169, it is stated:

"Where provision for indemnity is made by statute, an owner cannot recover it unless his case comes squarely within the limits of the statute, and the burden is upon him to present convincing evidence that the

Opinion No. 178.

**State Veterinary Surgeon—Livestock—
Notice of Owner—Destruction of Stock.**

Held: Word "destroyed" as used in Paragraph 9 of Section 3278, Revised Codes of Montana, 1935, means killed; owner of condemned stock must kill the same, or know that the same have been killed within sixty days in order to qualify for indemnity. The sixty days mentioned in Paragraph 9, supra, means sixty days from time owner is notified that stock must be destroyed by order of the livestock sanitary board.

February 23, 1944.

Dr. W. J. Butler
State Veterinary Surgeon
Livestock Sanitary Board
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animals destroyed were within its contemplation."

It is to be kept in mind that the act herein considered was enacted to preserve the health of the state under the police powers. Therefore, in view of the above cited law, it is my opinion that the owner of stock which has been ordered destroyed by the state veterinary surgeon, his deputies or agents, must prove upon filing a claim for indemnity, that the animal so ordered to be destroyed, was actually killed within the sixty days. To otherwise hold would cause continual work for the state veterinary surgeon and might necessitate several orders before the animal was finally killed.

In answer to your second question, as to from what date the sixty days begin to run, it is necessary to look to the entire act pertaining to indemnity for animals destroyed under order of the veterinary surgeon, and the intent that must necessarily have been in the minds of the legislators who passed the same

The act itself provides for indemnity. It provides certain property right in the person who owned the animal ordered destroyed. The act in no place provides that notice of the order to destroy the same shall be given to the owner of the said animal.

If the act is to be read together, it must be noted that a property right is given to the owner of the animal ordered destroyed which cannot be taken away except on notice to him under his constitutional rights. Were Paragraph 9 of Section 3279, Revised Codes of Montana, 1935, strictly construed by itself, it would be possible for the state veterinary surgeon, or his agents, to order animals destroyed and not notify the owner until after the expiration of sixty days and thereby avoid the obligation of the state and county, which obligation is provided by the very provision of the same act. To do so would be to take away a constitutional right by taking property without compensation.

Therefore, it is my opinion sixty days referred to in Paragraph 9 of Section 3279, Revised Codes of Montana, 1935, means sixty days from the date the owner is notified that the animal has been ordered destroyed.

Sincerely yours,
R. V. BOTTOMLY
Attorney General