

amount the state and county are authorized by law to pay, in which cases it would be deducted from the balance of the appraised value or the seventy five percent thereof.

April 5, 1944.

Mr. J. E. McKenna
County Attorney
Fergus County
Lewistown, Montana

Dear Mr. McKenna:

You have requested an opinion of this office as to the method of figuring the amount of indemnity that a county should pay for animals slaughtered under order of the Livestock Sanitary Board, where the federal government or other agency participates in the payment, as authorized by Section 3, Chapter 75, Laws of 1943, which amends Section 3279, Revised Codes of Montana, 1935.

Section 1 of said Chapter 75 provides that animals determined by the veterinary surgeon or by a deputy state veterinary surgeon to be affected with an **incurable disease** shall be paid for on the basis of seventy-five percent of its appraised value. However, a specific limitation is placed upon the county and state liability as follows:

“ . . . provided the total amount of indemnity paid by the state and any county for any such animal shall not exceed the actual sound value of an animal of its class, and provided further that the total combined amount of indemnity paid for such animal by the state and county shall not exceed the sum of one hundred dollars (\$100.00) for any registered purebred animal, or the sum of fifty dollars (\$50.00) for any grade animal.”

Section 2 of said Chapter 75 provides that in the event no evidence of an incurable disease is disclosed by autopsy, bacteriologic, serologic, microscopic or other findings, the owner shall be compensated on the full appraised value, provided the total combined amount of indemnity paid by the state and county does not exceed the one hundred dollars for purebreds and fifty dollars for grades, as is provided in said Section 1 of Chapter 75.

Section 3 of said Chapter 75 provides for indemnity on the full appraised value

Opinion No. 197.

**Livestock Sanitary Board—Animals—
Indemnity—Counties—Veterinary.**

Held: The amount of indemnity paid by the federal government or other agency other than the state or county for animals killed under order of the Livestock Sanitary Board, is to be deducted from the amount the indemnity which the state and county is authorized by law to pay and not from the appraised value, or of seventy five percent thereof as the case may be, unless the balance of the appraised value or seventy five percent thereof is less than the

for animals with curable diseases, with the same limitation as to the county and state combined liability. Section 3 amends said Section 3279, and provides for participation in part by other agencies than the state and county in paying such indemnity, and states in part 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 . . ." (Emphasis mine.)

Some contention might be made that this Section 3 of said Chapter 75 should be construed in the same light as Section 1 of Chapter 177, Laws of 1937, but it is to be kept in mind that in the last referred to section it is specifically provided that the salvage value is to be deducted from the claim presented by the owner and by Section 4 of said Chapter 75, amending Section 3274, Revised Codes of Montana, 1935, it is specifically provided that the claim shall be based on the appraised value, while in Section 3 or said Chapter 75, it is specifically provided the amount received from other agencies than the state or county shall be deducted from the amount of indemnity, **which otherwise would be payable by the state and any county**. Under the different wording of these two sections, it is plain that the legislature did not intend that the two deductions from the owner's indemnity should be from the same figure.

In Opinion No. 99, Volume 20, Report and Official Opinions of the Attorney General, after setting forth that the salvage is to be deducted from the claim, the following language is found:

"Please note that above provision does not say such deduction shall be from the amount of indemnity the state and county are authorized to pay. It says the deduction shall be from the owner's claim against the state and county."

Under the provisions of the law pertaining to such indemnity, it is easy to see how a claim might be filed when after taking the salvage off the balance of the full appraised value or seventy-five percent thereof, might be less than fifty dollars. Therefore, the claim should be made for the full or seventy-five percent of the appraised value, as the case may be, as the owner is entitled to full compensation, if such falls within the amount the state and county are required to pay.

Therefore, it is my opinion that where any sum is paid by the federal government or agency other than the state or county for indemnity, such portion as the government or such agency pays should be deducted from the sum of fifty dollars, in the case of grade animals, and the sum of one hundred dollars in the case of purebred animals, and the balance is payable by the state and county in equal amounts, as such sums of fifty dollars and one hundred dollars are the sums respectively, which otherwise would be payable by the state and any county, provided, however, if the balance of the full appraised value or seventy-five percent thereof, as the case may be, is less than fifty dollars or one hundred dollars. Then it would be deducted from such balance.

Sincerely yours,
R. V. BOTTOMLY
Attorney General