

Opinion No. 99.**Livestock—Livestock Sanitary Board—
Indemnity Payments for Livestock.**

Held: A person whose livestock is destroyed by order of the state veterinary surgeon or a deputy state veterinary surgeon as a result of being affected with an incurable disease is entitled to be paid for each of such animals on the basis of seventy-five per cent (75%) of its appraised value.

A person whose livestock is destroyed by order of the state veterinary surgeon or a deputy state veterinary surgeon as a result of being affected with or exposed to an infectious-com-

tagious, communicable, or dangerous disease, which is not of its nature necessarily fatal, is entitled to be paid for each of such animals on a basis of its full appraised value.

The total combined amount of indemnity paid for such animal, in either of the above cases, by the state and any 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.

If the carcass of an animal destroyed under the provisions of Chapter 75, Laws of 1943, has a salvage value, the net proceeds from such salvage shall be deducted from the claim against the state and county—seventy-five per cent (75%) of the appraised value of the animal affected with an incurable disease and the full appraised value of an animal affected with or exposed to an infectious-contagious, communicable, or dangerous disease, which is not of its nature necessarily fatal—not from the maximum amount of indemnity which the state and county are authorized to pay.

July 31, 1943.

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

Dear Dr. Butler:

You have asked how the amount of indemnity paid for animals destroyed on account of suffering from a dangerous disease is to be determined.

Section one of Chapter 75, Laws of 1943, amending, among other sections, Section 3271, Revised codes of Montana, 1935, provides in part:

"1. 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, shall be designated as animals of class 1 and unless otherwise provided **each of such animals shall be**

paid for on the basis of seventy-five percent (75%) of its appraised value

"3. Animals determined by the state veterinary surgeon or by a deputy state veterinary surgeon to be affected with or exposed to an infectious-contagious, communicable, or dangerous disease, which is not of its nature necessarily fatal, which animals are destroyed by order of such officer as a sanitary safeguard, shall be designated as animals of class 2 and unless otherwise herein provided **each such animal shall be paid for on a basis of its full appraised value.** . . ." (Emphasis mine.)

The same section provides a method of appraisal and payment for appraisal. Then it provides with relation to animals of class one the "total amount of indemnity paid by the state and 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 any 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." A similar maximum is imposed on animals of class two in the same section.

Thus, while the legislative assembly has said owners may make claim for seventy-five percent (75%) of the appraised value in one case and for the full appraised value in another case, that body has also seen fit to declare in clear and specific language what the maximum amounts of indemnity to be paid by the state and county will be in either case.

Many times, however, the carcasses of animals ordered destroyed have a salvage value. Lest some person at some time make claim for indemnity from the state and county and also sell the carcass of the destroyed animal and enrich himself at governmental expense, the legislature provided in Section 6, Chapter 75, Laws of 1943.

"It is specifically declared to be the intention of this legislative assembly that the enactment of this act does not repeal or amend Chapter 177 of the Session Laws of 1937, but is intended as additional legislation to facilitate the payment of indemnity in accordance with federal laws and

regulations of the bureau of animal industry, United States department of agriculture."

Section 1 of Chapter 177, Laws of 1937, referred to above, provides in part:

"Where a carcass or carcasses of animals ordered destroyed by this act are found, upon official post-mortem inspection, to be fit for human consumption, the owner shall receive the net proceeds from the sale of such carcass or carcasses, which proceeds shall be deducted from his claim against the state and county on account of such slaughter. . . ." (Emphasis mine.)

Please note the 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. Thus the net proceeds from the salvage of the animal destroyed as a result of being affected with an incurable disease shall be deducted from the amount resulting from a computation of seventy-five percent (75%) of its appraised value before the indemnity the state and county shall pay is computed. A similar deduction from the full appraised value of animals destroyed as a result of coming within class two would precede the determination of the amount of indemnity the state and county would pay for such animals.

Hence, it is my opinion:

A person whose livestock is destroyed by order of the state veterinary surgeon or a deputy state veterinary surgeon as a result of being affected with an incurable disease is entitled to be paid for each of such animals on the basis of seventy-five percent (75%) of its appraised value.

A person whose livestock is destroyed by order of the state veterinary surgeon or a deputy state veterinary surgeon as a result of being affected with or exposed to an infectious-contagious, communicable, or dangerous disease, which is not of its nature necessarily fatal, is entitled to be paid for each of such animals on a basis of its full appraised value.

The total combined amount of indemnity paid for such animal, in

either of the above cases, 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.

If the carcass of an animal destroyed under the provisions of Chapter 75, Laws of 1943, has a salvage value, the net proceeds from such salvage shall be deducted from the owner's claim against the state and county—seventy-five percent (75%) of the appraised value of an animal affected with or exposed to an infectious-contagious, communicable or dangerous disease, which is not of its nature necessarily fatal—not from the maximum amount of indemnity which the state and county are authorized to pay.

Sincerely yours,
R. V. BOTTOMLY
Attorney General