

## Opinion No. 193.

**Animals—Counties—Indians—Livestock—Livestock Sanitary Board.**

**Held:** (1) The county in which animals—destroyed by order of the state veterinary surgeon or a deputy state veterinary surgeon by reason of their affliction with disease, as set out in Chapter 75, Laws of 1943—were owned at the time they were determined to be affected with such disease shall be liable for the county's portion of any indemnity to be paid therefor. The ownership and county liable for indemnity are to be established as provided by Chapter 75, Laws of 1943, without reference to the assessment list or tax rolls, since Chapter 75 makes no mention of taxation or assessment of destroyed animals as a condition precedent to payment of indemnity therefor.

(2) Whether cattle branded ID (Indian Department) are or are not the property of the United States is a question of fact to be determined in the individual case from the particular facts involved.

(3) Indemnity shall not be paid for animals belonging to the United States (Section 3278, Revised Codes of Montana, 1935).

August 17, 1946.

Mr. T. R. Delaney  
County Attorney  
Lake County  
Polson, Montana

Dear Mr. Delaney:

You have requested my opinion regarding the right of your county to pay indemnity for certain cattle which

were condemned and slaughtered for Bang's disease. The cattle in question were branded ID (Indian Department) and were in the possession of an Indian ward who was living on his trust patent, according to the facts you present.

Section 3271, Revised Codes of Montana, 1935, as amended by Chapter 75, Laws of 1943, provides for payment for animals destroyed as a result of their infection with incurable, infectious, contagious, communicable, or dangerous diseases. Prior to the 1943 amendment indemnity was based on the assessed valuation of the animal or animals destroyed; but Chapter 75, Laws of 1943, shifted the indemnity formula from assessed to appraised valuation.

The cattle out of which your inquiry arises were destroyed because of their affliction with Bang's disease; and you assert your board of county commissioners object to the payment of indemnity for the reason the cattle were not taxable and did not appear on the tax rolls. In this regard, Opinion No. 201, Volume 20, Report and Official Opinions of the Attorney General, rendered on April 14, 1944, may be of some assistance. The inquiry there was whether cattle which were in Cascade County and were the property of a Cascade County resident, but were not assessed for the year in Cascade County, should be paid for by Cascade County. In answer this office said in part:

"Bang's disease being curable, the question falls within the provisions of paragraph 3 of Section 1 of Chapter 75, Laws of 1943, which reads, as far as pertinent here, as follows:

" . . . The county in which such animals was owned at the time it was determined to be affected with such disease shall be liable in part as hereinafter provided for any indemnity to be paid for such animal . . . "

"The statute clearly states the county in which such animal was owned at the time it was determined to be affected with the disease shall pay. Nothing is said about the place of last taxation . . . "

Nothing contained in Chapter 75, Laws of 1943, requires a reference to the tax rolls as a condition precedent to payment of indemnity by the county

for destruction of diseased cattle.

The second question you ask—regarding the payment of indemnity for cattle bearing an ID brand—is not so simple of solution. I have given considerable study to this matter and have been the cause of a rather extensive correspondence with federal authorities, hopeful of determining the ownership status of cattle bearing an ID brand. The Office of Indian Affairs of the United States Department of the Interior has advised regarding the use of the ID brand:

"Indians obtain their cattle through purchases from their own funds, from borrowed funds or through loans of cattle by the tribe or federal government. When purchases are made from an individual's trust funds, or the title to cattle made available to the Indians is in the United States, or when purchased in the name of the United States, it is required that they be branded with the ID brand. If the cattle are purchased by individuals with unrestricted funds, they are not subject to branding with the ID brand; cattle which are branded ID in accordance with the foregoing provisions, the title to which is in the United States, are not subject to taxation. Superintendents of Indian agencies are authorized to release the interests of the United States in trust or restricted property of Indians, except land (Section 30.2 (e) Title 25, Code of Federal Regulations.)"

In view of the fact superintendents of Indian agencies are authorized to release the interests of the United States in trust or restricted property of Indians, the true title to cattle which bear the ID brand becomes very often a question of fact. And I, as Attorney General of the State of Montana, cannot pass upon that question.

As you have pointed out, Section 3278, Revised Codes of Montana, 1935, provides in part as follows:

"The owner of any animal or property destroyed . . . shall be entitled to indemnity therefor . . . except in the following cases:

"1. Animals belonging to the United States . . ."

The burden is on the person claiming indemnity to bring himself with-

in the statute authorizing payment. In this case, then, the burden will fall upon the Indian who makes claim for indemnity to present evidence the cattle—although branded ID—were his property, and not property belonging to the United States.

“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 animals destroyed were within its contemplation.” (3 C. J. S. 1168, 1169.)

It is my opinion:

(1) The county in which animals—destroyed by order of the state veterinary surgeon or a deputy state veterinary surgeon by reason of their affliction with disease, as set out in Chapter 75, Laws of 1943—were owned at the time they were determined to be affected with such disease shall be liable for the county's portion of any indemnity to be paid therefor. The ownership and county liable for indemnity are to be established as provided by Chapter 75, Laws of 1943, without reference to the assessment list or tax rolls, since Chapter 75 makes no mention of taxation or assessment of destroyed animals as a condition precedent to payment of indemnity therefor.

(2) Whether cattle branded ID (Indian Department) are or are not the property of the United States is a question of fact to be determined in the individual case from the particular facts involved.

(3) Indemnity shall not be paid for animals belonging to the United States (Section 3278, Revised Codes of Montana, 1935.)

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General