

## Opinion No. 53.

**Livestock Sanitary Board—Indemnity  
what law governs payment—Animals,  
ordered destroyed.**

- Held:** 1. Indemnity payable on animals ordered condemned, where the appraisal has been made prior to July 1, 1945, the effective date of Chapter 164, Laws of 1945, is governed by the provisions of Section 3279, Revised Codes of Montana, 1935, as amended by Section 3, Chapter 75, Laws of 1943, but no payment is to be made until the animal is actually destroyed.
2. Indemnity payable on animals ordered condemned, where the appraisal has been made after July 1, 1945, is governed by the provisions of Chapter 164, Laws of 1945, but no payment is to be made until the animal is actually destroyed.

July 7, 1945.

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

Dear Dr. Butler:

You have requested my opinion whether, in the payment of indemnity for the destruction of livestock ordered destroyed by the commission, the provisions of Chapter 164, Laws of 1945, become effective:

1. When the owner is notified that the animal being tested is diseased;  
or
2. When the animal is actually destroyed.

Chapter 164, Laws of 1945, is an amendment of Section 3279, Revised Codes of Montana, 1935, as amended by Section 3, Chapter 75, Laws of 1943, and deals with the manner in which deductions from indemnity payable by the state and county are made in those cases where the federal government makes payment of indemnity on the same animal. This later amendment changes somewhat the procedure outlined in the amended statute. It becomes effective July 1, 1945.

Sections 3271 to 3279, inclusive, Revised Codes of Montana, 1935, provides for the testing, classification, condemnation, and indemnity payable for animals found to have certain diseases. These statutes provide that when an animal is ordered destroyed, the owner and the state inspector may agree upon the value of such animal, or upon failing to do so, appraisers are appointed to make such appraisal. It is then provided that the animal must be destroyed within sixty days from the time the owner is notified. The owner may then present his claim for indemnity. No time for presentation of such claim is provided, but no claim may be paid unless it is accompanied with an affidavit that the animal has actually been destroyed, as well as a certificate as to the appraisal.

It is clear from a reading of the above statutes that although the state may order these animals destroyed, it recognizes a certain property right in the owner. The value of such property right is determined by an appraisal. It must, therefore, follow that at the time of such appraisal, this property right in the owner and the resultant obligation to pay indemnity by the state and county, is fixed and determined, payable, however, only when the animal is actually destroyed.

Therefore, in the payment of indemnity, the procedure outlined in the statutes in force at the time the right to indemnity accrues would govern. Hence, for all animals condemned and ordered destroyed, and appraisals of which have been made prior to July 1, 1945, the effective date of Chapter 164, Laws of 1945, the procedure outlined in Section 3279, Revised Codes of Montana, 1935, as amended by Chapter 75, Laws of 1943, would apply. For all animals condemned, ordered destroyed and appraised after July 1,

1945, the provisions of Chapter 164, Laws of 1945, would apply.

The indemnity payable is based upon the appraised value of the animal ordered destroyed. Therefore, the notice to destroy, or the actual destruction of the animal may have no bearing upon the method of determining the indemnity, nor the deductions to be made, except that no indemnity may be paid until appraisement has been made and the animal actually destroyed.

It is therefore my opinion that:

1. Indemnity payable on animals ordered condemned, where the appraisal has been made prior to July 1, 1945, the effective date of Chapter 164, Laws of 1945, is governed by the provisions of Section 3279, Revised Codes of Montana, 1935, as amended by Section 3, Chapter 75, Laws of 1943, but no payment is to be made until the animal is actually destroyed.

2. Indemnity payable on animals ordered condemned, where the appraisal has been made after July 1, 1945, is governed by the provisions of Chapter 164, Laws of 1945, but no payment is to be made until the animal is actually destroyed.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General