

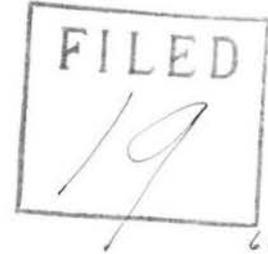
STATE:

Cattle shipped or carried from stock yards, feed yards, or place of sale, auction or barter within state to another point within state not required to be inspected or tested under Laws 1933, page 174.

✓ HB 132 Laws 33

12-2

December 1, 1933



Honorable H. S. Curry
State Veterinarian
Jefferson City, Missouri

Dear Sir:

This Department acknowledges receipt of your letter dated November 24, 1933, as follows:

"I am attaching herewith copy of Missouri's 'Stocker and Feeder Law', which has to do with the inter and intra-state shipment of cattle in the State of Missouri. You will note under Section 1 that all cattle shipped into this state, or from one point to another within the state, shall be accompanied by a health certificate, and that female cattle and bulls for dairy and breeding purposes shall be accompanied with a tuberculin test chart, showing that the animals have passed a negative test within sixty days. We are also including correspondence covering a shipment of cattle from the Kansas City Stock Yards to Brookfield, Missouri; the cattle in this shipment belonging to Mr. Milton Yagle of Brookfield--they were purchased by him at Grandin, Missouri, and shipped to the Kansas City Stock Yards, where our Inspector, Doctor E.J. Packer, insisted that thirty-five of the animals in the shipment should be tested. He made the injection of tuberculin, tagged the animals for identification, and, as it requires seventy-two hours to complete the test, he permitted the shipment to go forward subject to release at destination at the end of the seventy-two hour period by Doctor M. S. Campbell, who is a deputy state veterinarian at Brookfield. When Doctor Campbell advised Mr. Yagle that thirty-five head of the cattle in the shipment came under the provisions of the law requiring a tuberculin test and that the animals had been injected and permitted to go forward for release, Mr. Yagle flatly

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refused to do anything about it and, as a result, the final inspection on the shipment was not made.

You will note that Doctor Campbell makes the statement that these cattle were to be sold at public sale on October 24. I have been waiting to receive definite information from him as to whether these cattle were actually sold.

I would be very glad to have an opinion as to whether, under the provisions of the law, we are justified in instituting proceedings against Mr. Yagle for failure to comply with the provisions governing the transportation and sale of cattle within the State of Missouri. In my opinion, it seems that this is an open violation; however, being somewhat new in administering the affairs of the office of State Veterinarian, I hesitate to go into matters of this sort without knowing beforehand just what authority we have under the provisions of the law; therefore, I would be very happy to receive an opinion from your office on this matter."

A. SESSION ACTS Laws Missouri 1933, page 174.

The Act referred to in your letter is to be found in Laws 1933 page 174. The applicable portions follow:

"All cattle entering Missouri from any point outside the State or from any public or railway feed yards, or from any public stockyards or other established place of sale, auction or barter located within the State, shall be accompanied by a health certificate, stating that such cattle are free from symptoms of infectious or contagious diseases:

Provided, however, that female cattle and/or bulls for dairy or breeding purposes shall be accompanied by a tuberculin test chart showing that the animals have passed a negative test within six months, or by a certificate showing them to be part of an

accredited herd or originating in a modified accredited area. Certificates shall be issued by a veterinary inspector of the U.S. Bureau of Animal Industry or by a veterinarian regularly in the employ of the State or by an accredited veterinarian. Tuberculin test charts shall be made in triplicate; two copies shall be mailed to the State Veterinarian and one copy shall accompany the shipment. Test charts shall conform with those of the U.S. Bureau of Animal Industry, governing the interstate movement of cattle. * * * * "

"Provided further, that female cattle of the beef breeds intended for feeding and grazing purposes may be admitted under quarantine until slaughtered, shipped to public market, or inspected and released by recognized authority as provided in Section 2 of this act. That bull calves under six months of age may be admitted on signed statement of the owner or his agent that said animals will be castrated within thirty days after arrival at destination."

B. CONSTRUCTION OF SESSION ACT.

1. Some portions of the act are clear enough as to their meaning, while other parts are, to us, meaningless in their practical application. The Act provides,

"All cattle entering Missouri from any point outside the State* * * * shall be accompanied by a health certificate, stating that such cattle are free from symptoms of infections or contagious diseases* * * *".

We assume that the legislature meant that the cattle described in the first proviso to Section 1 of the Act, above set out, were to be subjected to the test therein provided for when such cattle were being moved as provided in the first paragraph of Section 1, above set out, or that the Legislature intended as if the first proviso to Section 1 read,

"* * * * female cattle and/or bulls for dairy or breeding purposes, entering Missouri from any point outside the State shall be accompanied by a tuberculin test chart showing that the animals have passed a negative test* * * * ."

So construed and that far the Act is workable.

2. It is the part of the Act dealing with cattle from public or railway feed yards, public stock yards or other established place of sale, auction or barter located within this State, that we encounter the difficulty. You infer in your letter that the Act says or means,

'All cattle shipped into this State or (shipped) from one point to another within the State'

but we cannot so read the Act. It reads to us as if it were written, in the first paragraph of Section 1, that

"All cattle entering Missouri from any point outside the State or all cattle entering Missouri from any public or railway feed yard located within the State* * shall be accompanied by a health certificate,* * *"

and, as to the first proviso to Section 1, that,

"Female cattle and/or bulls for dairy or breeding purposes entering Missouri from any point outside the State or entering Missouri from any public or railway feed yards located within the State* * shall be accompanied by a tuberculin test* * * * ."

Of course cattle cannot enter the State when they are at a yard within it and that part of the Section is void because it does not mean anything.

3. We reach the conclusion that the only enforceable parts of the Act are those prohibiting cattle entering this State from points outside the State without an accompanying health certificate or tuberculin test chart.

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C. PERMITTING CATTLE TO GO FORWARD WITHOUT TEST.

If the cattle in question were entitled to be examined or tested, the examination or test should have been completed prior to the moving of the cattle because cattle are required to be examined or tested on entering Missouri or, if the Act means as you construe it, before leaving any such yard as is mentioned in the Act and not afterward. The Legislature intended to prevent the spread of disease among cattle by prohibiting the shipping or moving of certain cattle until certain tests and inspections had been made, but the Legislature did not word Section 1, so as to give it its full probably intended effect, that is it does not include cattle shipped from one point to another within this State.

Even if the Act covered the shipment in question, your deputies had no authority to permit or order a shipment to go forward until you were prepared to furnish the required certificate, yet, the shipment having been directed to proceed with orders to complete the test at the point of destination a jury would not likely convict a shipper of transporting cattle without a proper certificate.

CONCLUSION

It is our opinion that there could not be a successful prosecution under the facts as detailed in your letter and under the Act above referred to.

We are returning your inclosures herewith.

Very truly yours,

GILBERT LAMB
Assistant Attorney General,

APPROVED:

ROY MCKITTRICK
Attorney General.

GL:LC

Inclosures