

LIVESTOCK: STATE VETERINARIAN: ONE WHO SHIPS, TRANSPORTS, DRIVES,  
OR OTHERWISE MOVES LIVESTOCK CON-  
TRARY TO GOVERNOR'S QUARANTINE  
PROCLAMATION IS CHARGEABLE WITH  
A CRIME.

5-23  
May 22, 1934.

Mr. H. E. Curry  
State Veterinarian  
Department of Agriculture  
Jefferson City, Missouri



Dear Sir:

Your letter requesting an opinion from this office reads as follows:

"I am taking the liberty of enclosing a letter from Mr. E. W. Salmon of Grant City, relating an experience that he and other farmers in Worth County have had with stock pigs which they recently purchased at the community sale in Grant City.

"I am also enclosing a copy of Proclamation, issued March 4th, 1932, by Governor Gaulfield, which, as far as I know, is the only rules and regulations we have in the State of Missouri which attempts to control the transporting and the buying and selling of stock pigs in this state.

"You will note from Mr. Salmon's letter that he and other farmers have sustained rather heavy losses, and, as far as I know, these animals were not moved in accordance with the provisions in the Governor's Proclamation, and the operator of this sale should be liable; however, there have been a few cases of this sort tried, and, for various reasons, we have failed to secure conviction, therefore, I am rather reluctant to enter into any other cases unless

someone on your staff is able to show us how we may proceed in order to obtain convictions.

"I regret very much to bother you with this matter; however, it is of much importance to the farmers of this state, and I sincerely trust that we may be able to find some way whereby we can legally stop the practice of promiscuously moving of stocker and feeder pigs from one point to another and offering them for sale in this state unless they are safeguarded with vaccination and health certificates as prescribed by law."

The letter received from Mr. Salmon, referred to in your communication, reads as follows:

"Your letter of the 13th - is at hand, and will say in reply, that I have lost all of the 20 head of Stock pigs - that I have bin writing you about, every one of them died, which cost me \$65.00 at this sale.

"Mr. Bill Phillips of our City, bought 67 head at this same sale, and he has lost most all of them. Mr. Olevor Roberts, of Our County bought 44 head at this same sale and has lost all of them, Mr. Ben Prough, of our City bought 53 head on the same day that I bought mine and has lost all of them. Mr. Joseph A. Hughes of Worth, Mo. bought 48 head at this same sale and lost all of them.

"I have been inquiring around and find out most all of these stock pigs came from Joplin, Missouri, into our County, was trucked up here and sold while sick, and I think there had ought to be some way to stop it. There is two damage suits filed in this County, now, and will be more, if this public sale is not stopped.

"Now I have given you the exact facts and would like for you to take this matter up with the above parties who have lost hogs by buying them at this sale.

"This public sale has been going on for over one year, and I am sure it is spreading this disease all over this County, and had ought to be stopped, hoping you will look after this matter and put an embargo on public sales of this kind in Worth County. You probably will hear from some of the other boys in regard to their losses in the near future as they tell me they expect a damage suit will be brought for a good many of these losses in our County, caused by this public sale - every Thursday afternoon at one o'clock, in our City, hoping to hear further from you."

Portions of Governor Caulfield's Proclamation, referred to in your letter, appear as follows:

Section 1, entitled "Rules and Regulations" at page 1, in paragraph 1. provides:

"No swine to be used for stocker, feeder, and other special purposes, as hereinafter designated, shall be shipped, transported, trailed, driven, or otherwise moved, from one point to another within this state, except as hereinafter provided."

Paragraph 6, of the same section, at page 2, provides:

"Swine to be used for stocker and feeder purposes are permitted to be transported to any sale pen, assembling yards, holding quarters, or other concentration pens, for purposes of resale or reshipment as hereinafter provided."

Section 3, entitled "Movement of Stocker and Feeder Hogs other than from public stockyards," at page three, paragraph 1, provides:

"The following classes of swine shall come within the scope of this section:

"(a) Swine which are offered for sale by any speculator, dealer, or any other person engaged in the business of assembling, reselling, or trafficking in swine.

"(b) Swine assembled at concentration points, either at railroad stock pens in cities or villages, or elsewhere, at or through which said swine from different farms or communities are brought in contact and offered for sale or trade. Provided that nothing in this section shall be so construed to apply to swine assembled for the purpose of reshipment or transportation to a public market operating under federal or state supervision.

"(c) Swine to be used for stocker and feeder purposes shall only be shipped, or transported, from points designated in this section under the following conditions:

" 1. All such hogs before being shipped, or otherwise transported, from such points as designated in this section shall be inspected by a recognized veterinarian and found free from hog cholera and other infectious or communicable diseases, as hereinafter provided.

" 2. All inspection of hogs shipped or transported from such places to another within the State of Missouri shall be made by the State Veterinarian, an official deputy state veterinarian, or by a competent graduate veterinarian whose certificate of health shall be approved in writing by the State Veterinarian of Missouri.

" 3. The inspection of such hogs for shipment or transportation, shall include the immunization of each and every hog with the Dorset-Niles-McBride hog cholera serum. If such inspection discloses said hogs are healthy at the time of immunization then such shipment may immediately move forward to destination, subject to quarantine rules.

" 4. In case of emergency, or at points where competent veterinary supervision is not available, swine coming under the provisions of this section may by special permission obtained from the State Veterinarian be shipped, trucked, or otherwise moved, to destination subject to quarantine, inspection, and vaccination, at the expense of the owner by a recognized veterinarian. Request for such permits shall come from the consignee, or his agent, whose duty it shall be to designate a veterinarian approved by the State Veterinarian, and failure of the consignee to permit such veterinarian so designated to attend to the inspection and quarantining of such shipment shall constitute an infraction of these regulations.

" 5. This section is in nowise to be construed to apply to any hogs to be used for feeding or stocking purposes, trucked, driven, or hauled from farm to farm in this state.

" 6. Sows to be used for breeding purposes shall occupy the same status as stocker and feeder hogs, except purebred sows and males shipped, or transported, in crates.

" 7. Test pigs from government or state supervised serum plants may be transported from such plants to points within this state when properly passed and certified to by the inspector in charge."

The law authorizing Governor Caulfield to make such a proclamation giving sanction to same, and providing a penalty for violation of the rules laid down in said proclama-

tion can be found in Sections 12535, 12536 and 12537, R. S. Mo. 1929. This proclamation, I am assuming, has never been revoked. If that be true, the rules set out above are as binding to-day as when proclaimed. The proclamation, by its express allegations, shows upon its face that it was made according to the terms of the statute, and that the author followed the procedure outlined in the statute when he promulgated this proclamation.

Section 12535, R. S. Mo. 1929, provides:

"The governor of Missouri may, in his discretion, order said veterinary surgeon to visit any state or territory and investigate any dangerous or infectious disease, including contagious or infectious abortion, said to exist in any designated locality in the state named and report to the governor the result of said investigation, together with such suggestions that he may deem proper and right. On receipt of such report, or any official report of the state veterinarian, the governor may call the secretary of the state board of agriculture and the state veterinary surgeon together, and said secretary and said veterinary surgeon may, if deemed wise, arrange and adjust such rules and regulations as safety may demand for the transportation of live stock through or into this state from any state or territory, or any foreign country or parts thereof, where dangerous, contagious or infectious diseases, including contagious or infectious abortion, may exist. Such rules and regulations shall not be in contradiction with constitutional laws of transportation and commerce, and shall be subject to the approval of the governor. The governor, on the approval of such rules and regulations, shall issue his proclamation, scheduling and quarantining against such localities

in which domestic animals may be considered as capable of conveying infectious or contagious diseases, including contagious or infectious abortion, and prohibit the importation and the unloading in this state of any livestock of the kind capable of causing such disease, except under the aforesaid rules and regulations. Such rules and regulations, after approval by the governor, shall be sent to all corporations or other agencies doing the business of transportation or conveying live stock through or into the state of Missouri; and any corporation or agency or individuals who shall violate such rules and regulations by transporting prohibited animals shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than a thousand dollars nor more than ten thousand dollars for each and every offense, and shall be liable for any and all damages or loss that may be sustained by any party or parties by reason of such importation or transportation: Provided, that in no case shall such corporations or agencies or individual be liable for any damages resulting from the shipping of stock into this state which has been inspected by the proper authorities and a certificate of health as to same having been given by said authorities. Such penalty shall be recovered in any county in this state into or through which such stock is brought upon information filed in the circuit court of any such county."

Section 12536, R. S. Mo. 1929, provides:

"The governor, when informed by the state veterinarian that either contagious pleuro-pneumonia, rinderpest, foot and mouth disease, maladie du coit, contagious or infectious abortion, or any other contagious or infectious live stock disease has become largely disseminated or epidemic among domestic animals throughout any

municipality or geographical district in this state, or is found to exist in any herd or herds in this state, may call the state board of agriculture and the state veterinarian together, and said board and said veterinarian shall, if deemed necessary to eradicate or prevent the spread of such disease, formulate for the state veterinarian and the county courts rules and regulations under which stock capable of carrying said diseases, or any of them, shall be permitted to move to other parts of the state; such rules and regulations shall be subject to the approval of the governor, who thereupon shall issue his proclamation scheduling and quarantining such localities, and forbidding the carrying or transportation or moving of all domestic animals of the kind diseased from such municipalities or district or county to another, or from one premises to another, or over any public highway or any lot or ground not sufficiently fenced to prevent animals from going through or from being brought into such infected districts, municipalities or counties except in accordance with the aforesaid rules and regulations. The county court or other legally substituted court of the county in which such infected locality or district shall have been quarantined by the governor, shall be notified by the state veterinary surgeon and furnished with copies of said regulations. Said county court shall thereupon comply with said rules and regulations, and issue orders to the sheriff to assist said veterinary surgeon in carrying out the provisions of the same."

Section 12537, R. S. Mo. 1929, provides:

"Any person or persons who shall in any way interfere with or obstruct said veterinary surgeon in the discharge of his duties, or any owner or owners, person or persons, who shall be notified to quarantine the same as provided in this article and who shall violate any of the provisions thereof, or any person or persons who shall violate any of the provisions of the article regard-

ing district or municipality quarantine, shall be guilty of a misdemeanor, and punished by a fine not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail not less than one month nor more than one year."

Thus we see that the Legislature has delegated to an administrative officer, the Governor, the right to proclaim rules, the violation of which are provided for in the statute to be a misdemeanor. We also see by the letters set out, supra, that there can be evidence collected from those who purport to know that these rules have been and are being violated. The question presented is this: Is one, guilty of violating those rules of an administrative officer, chargeable with a crime?

In the case of State v. Dixon, a Missouri case decided by Division No. 2 of the Missouri Supreme Court, not yet reported, which is pending in the Court In Banc, the court held that where the Legislature delegates the power to make reasonable rules to the Public Service Commission, an administrative body, and at the same time provides that the violation of said rules duly promulgated be a misdemeanor, then one charged with the violation of said rules is properly charged with a crime. Such is the exact circumstance in the instant case.

#### CONCLUSION.

It is our opinion that the rules laid down in Governor Caulfield's proclamation are reasonable rules. Following the logic of the Dixon case, we are of the opinion that said rules have the sanction of law, and have been properly promulgated as required by law. We are of the further opinion that one who violates these rules should be charged with the violation of said rules - which is a crime, and should be punished, if found guilty, under the provisions of Section 12537, supra.

Respectfully submitted,

APPROVED:

ROY McKITTRICK  
Attorney-General.

WM. ORR SAWYERS  
Assistant Attorney-General.

WOS/afj