

ANIMALS: Free stock range: Interpretation of Section
12778, Revised Statutes Missouri 1929

11-10

November 9, 1937

FILED
51

Mr. Hubert E. Lay
Prosecuting Attorney
Texas County
Houston, Missouri

Dear Sir:

This Department is in receipt of your recent letter requesting an opinion relative to the statutes pertaining to inspection of cattle and other animals.

I

For the sake of convenience, we will attempt to answer the different questions presented in your letter numerically.

"In a county where certain Townships have free stock range would persons shipping or permanently moving cattle or hogs from such townships that have stock law be required to have such stock inspected by the Brand Inspector?

"Would this Article apply to persons moving stock across the county from some other point when they do not have a certificate showing that such stock was inspected in the county from which they were taken? "

Article II, Chapter 88, Revised Statutes of Missouri 1929, consists of Sections 12778 to 12782, inclusive, which were passed by the Legislature in 1921. We are unable to find any decision interpreting the sections by any of our courts, hence we must attempt to glean the meaning of the statute by its own terms.

Section 12778 was amended by the Fifty-ninth General Assembly so that it now reads as follows: (Laws of Missouri 1937, page 223)

"All persons, firms or corporations shipping, driving or permanently moving any neat or horned cattle or hogs from any county in this State or subdivisions thereof, having free stock range, to any point or destination outside the confines of such county, shall, before removing the same, have such cattle and/or hogs, duly inspected by an authorized brand inspector whose duty it shall be to inspect the same and make a record of all brands, marks, labels of other means of identification and to furnish a certificate thereof to the effect that such cattle and/or hogs, have been duly inspected, to such person, firm or corporation applying therefor, and such brand inspectors certificate shall be legal authority to procede in the removal of such cattle within the meaning of this Article, Provided, that nothing in this Article shall prevent persons or individuals from driving or removing their own cattle from their range as defined in Section 12818 of the Revised Statutes of the State of Missouri, for the year of 1929, to their own premises. "

Taking into consideration the exception as contained in Section 12818, as mentioned in the proviso of Section 12778, quoted supra, we think the statute is plain in its provisions to the effect that persons shipping or permanently removing cattle or other animals from a township having free range to another county are required to have such stock inspected by the brand inspector.

With reference to moving stock and other animals across the county from some other point, when such animals do not have a certificate showing that the stock was inspected in the county from which they were taken, we assume that you mean that the stock is removed from one county having free range across a given county having free range to its final destination in another county. If we are correct in the facts, we are of the opinion that such constitutes a violation of Section 12778, but that the venue of the crime would not be in the county which the animals were transported across but rather in the county of the origin, or, in other words, the point of beginning of the transportation, as Section 12778 uses the expression

"from any county in this State or subdivisions thereof, having free stock range, to any point or destination outside of the confines of such county."

We arrive at this conclusion mainly for the reason that Section 12778a, being the penalty section, and none of the statutes state that an offender may be prosecuted in any county from which such animals are transported or driven over. And the fact that Section 12781 states that it shall be the duty of the inspector or assistants to appear at the place and time designated for such inspection forthwith and inspect such cattle as are intended to be removed or shipped.

II

"Section 12781 says that this article shall not apply to any

cattle not having a brand on the body. Would this in your opinion only apply to cattle which had a figure or device burned on same by a hot iron or would it also include stock which had other marks or labels for identification?

"It appears to me that if this Article could be enforced by placing Brand Inspectors on the Highways leading out of the county we would be able to stop a lot of cattle stealing and I would like to have your opinion on this manner of enforcing it."

The exact exception or proviso of Section 12781 is as follows:

"Provided, that this article shall not apply to any cattle not having a brand on the body."

From an entire reading of Sections 12778 to 12781, it would appear that it was the intention of the Legislature, in passing said sections, to prevent the stealing or the loss of cattle and other animals by mistake caused by the mixing or wandering of such animals when open stock range exists.

The word 'brand' in its significance is defined in State v. Wolfley, 75 Kas. 406:

"The practice of branding has become the recognized mode of marking animals so that the owner may recognize

them, and so widely used is it that it has become almost the only means employed for that purpose When the herd is a large one it becomes necessary that some practically indelible mark should be placed on them, and branding has been found to be the best mark for that purpose. It is in every cattle country a well recognized mode of identification."

In the decision of Churchhill v. Georgia R., etc. 108 Ga. 265, it is said:

"Civ. Code Sec. 2248 makes it the duty of overseers or track menders of railroads to file with the station agents 'a list of the different marks and brands of all stock killed upon their respective sections the preceding week.' It was held that 'brand' indicates some figure or device burned on the animal by a hot iron, a means of identification, and is more commonly used on animals, such as horses, mules, and the like, while others are identified by marks made by knife cuts in the ear, such as cattle, hogs, and the like."

However, even though the decisions indicate that 'brand' means some figure or device burned on the animal by a hot iron, yet, we think that it was the intention of the Legislature to include marks and labels and other means of identification. We base this conclusion on the statutes when read together. The pertinent part of Section 12778, Revised Statutes Missouri 1929, is as follows:

"have such cattle * * * *,
duly inspected by an authorized
Brand inspector whose duty it
shall be to inspect the same
and make a record of all brands,
marks, labels or other means
of identification."

Therefore, even granting that Section 12781 uses the word "brand," we think that the word "brand," as used in said section, includes not only brands made by hot irons but marks, labels or other means of identification on the body of the animal.

We call your attention to the fact that Section 12780, in mentioning the duties of the sheriff, contains the provision to the effect,

"to be furnished by the county,
showing for whom inspected, show-
ing for whom inspected, date of
inspection, brands, marks or other
description suitable for identifica-
tion."

With reference to the enforcement of Article II, Chapter 88, as stated in the beginning, there are no legal precedents which may serve as a guide; However, we think your suggestion to the effect that brand inspectors may be placed on the highway leading from the county with authority to stop and inspect such cattle or other animals would be an efficient manner to prevent cattle stealing.

However, it would appear that the crime is committed when such cattle are removed before being duly inspected.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

OWN LC