

DEPARTMENT OF AGRICULTURE:

Proclamation made by Governor  
Caulfield on March 4th, 1932  
in reference to rules and regulations  
of shipment of hogs within the state  
of Missouri, is no longer in effect.

April 7, 1938

4-9



Mr. H. E. Curry,  
State Veterinarian,  
Jefferson City, Missouri.

Dear Sir:

This will acknowledge receipt of your request dated  
March 24, 1938, for an official opinion which is as follows:

"Enclosed you will please find copy of  
Proclamation issued by Governor Caulfield,  
March 4, 1932, enacting rules and regu-  
lations relative to the shipment and  
quarantining of hogs within the State of  
Missouri.

We are having a great deal of trouble with  
parties who make it a practice of buying,  
selling, and trading in stocker and feeder  
pigs. These animals are transported from  
one sale to another in trucks, until they  
are finally sold to some farmer, who  
generally loses a large per cent of them  
on account of hog cholera and other in-  
fectious diseases. Therefore, we would  
like to have an opinion as to whether the  
Proclamation issued by Governor Caulfield  
is still in force, and in legal form. If  
it is, we shall attempt to institute pro-  
ceedings against parties violating pro-  
visions of the Proclamation and try to  
effectively stop the promiscuous movement  
of stocker and feeder pigs that is now  
being carried on in violation of the rules  
and regulations contained in Governor  
Caulfield's Proclamation."

Section 12535, R.S. Mo. 1929, among other provisions therein, provide:

"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.\*  
\* \* \* \* \* 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:"\* \* \* \* \*

This section does not say upon the proclamation of a past governor, but specifically upon the proclamation of the governor of Missouri. In the first part of the section it sets out the following:

"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."\* \* \* \* \*

Under this section the veterinary surgeon, which means the state veterinary surgeon, must first make an investigation and then report to the governor, and after compliance with such order for investigation, the governor then shall make the proclamation and under this section the proclamation of Governor Henry S. Caulfield, made on the fourth day of March, 1932, is no longer in effect.

In the case of State ex rel. v. Hitchcock, 241 Mo. 433, l.c. 469, the Court said as follows:

"Mr. Webster defines the words as follows:

'1. Act of proclamation: official or general notice; publication.

'2.. That which is proclaimed, publicly announced. . . .

'Law: A public notice by an official of some order, an intended action, or some state of facts. In British and

American law the term is used only of such notices by an administrative or executive officer, or the King of Great Britain, the President of the United States, a Governor, mayor, etc., esp. with reference to some matter of public policy or the exercise of some administrative or executive power affecting the public at large; as a proclamation of material law; a Thanksgiving proclamation.'

When we analyze this definition, we find that it is composed of two elements, namely: first, the officer whose duty it is to make the proclamation, and, second, the matter to be proclaimed by him.

Now as to the first: Who is the officer designated by the Constitution to make the proclamation? That question is answered in plain terms by the Constitution itself. It says 'upon the proclamation of the Governor,' etc. That language means the Chief Executive of the State; not the Governor, the Secretary of State and the Attorney-General, nor the two latter by themselves. There is nothing in the language used, which by any fair or reasonable construction can be said to include or refer to the Secretary of State or Attorney-General, severally or collectively; but if we read the language just quoted in connection with its context, it will clearly appear that it was the intention of the framers of the Constitution to exclude the Secretary of State and the Attorney-General from participating in the proclamation. The language of the contract

is that all three of said officers shall apportion the State into districts, make out and sign the statement thereof, and file it in the office of the Secretary of State, but when it comes to speak of the proclamation, it drops therefrom the words 'Secretary of State' and the 'Attorney-General,' and all nouns and pronouns and all other words which refer to them in any manner, but says in plain and unambiguous language that the proclamation shall be made by the Governor."

Under authority of Section 12535, R.S. Mo. 1929, the governor may, in his discretion, order the state veterinary surgeon to visit any state or territory and investigate any dangerous or infectious diseases 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 stock, etc. After this described meeting has been held, the governor, which means the present governor, may issue the proclamation as set out in Sections 12535 and 12536, R.S. Mo. 1929.

In the case of State v. Chicago, Milwaukee and St. Paul Railroad, 200 Mo. App., page 109, the Court held:

"The matter of quarantine of live stock and regulating their transportation between the states is interstate commerce and when acted upon by Congress so as to impose its own rules and regulations, state quarantine regulations are superseded; and a conviction of a transportation

company for violating a State statute is without legal support."

The Court, in the same case, also said:

"\* \* \* \* The Secretary of Agriculture and the Governor of the state, in conjunction with the State Board of Agriculture, as distinct bodies, are empowered by the respective statutes to declare quarantine and to make and promulgate rules and regulations respecting the transportation of live stock into this State. Each is required to give notice of the regulations to transportation companies and large (but different) penalties are inflicted by each for a violation of the regulations and rules of each, respectively. Illustration is not needed to show the endless confusion and embarrassment to interstate commerce and the companies transporting it in endeavoring to comply with both laws. Two concurrent jurisdictions may exist together when one is quiescent; but when both are commanded to lay hold of the same matter at the same time, confusion and conflict will follow, unless one is the superior, and which when called into exercise of its power, will supercede the other. In the present instance the federal statute, under the authority of the constitution of the United States, supplants that of the State."\* \* \* \* \*

In the same case the Court said:

"\* \* \* If, as insisted time and again by the State, no federal law was in force until the event of the secretary of Agriculture declaring quarantine, what would be said of a situation where

the Secretary did not consider there was cause for quarantine and therefore took no action and the State thought there was? What sort of medley would this opposite action and clash of authority present?

Something similar to the theory presented in this case was advanced in *Nor. Pac. Ry. v. Washington*, 222 U.S. 370, and *Louisville Ry. v. Hughes*, 201 Fed. Rep. 727, 746, 751, and it was rejected. We quote the following from the opinion in the first case: 'It is elementary, and such is the doctrine announced by the cases to which the court below referred, that the right of a State to apply its police power for the purpose of regulating interstate commerce, in a case like this, exists only from the silence of Congress on the subject, and ceases when Congress acts on the subject or manifests its purpose to call into play its exclusive power.' \* \* \* \* \*

Under the above ruling any proclamation made by the present governor after an investigation in other states made by the state veterinarian would be superseded by any of the United States regulations under the secretary of agriculture and would be of no effect where the matter would be properly covered by the regulations of the United States Secretary of Agriculture.

The proclamation, as authorized under Sections 12535 and 12536, R.S. Mo. 1929, is to be construed as giving the governor authority to issue proclamations in case of emergency where the state legislature is not in session or could not pass any rules or regulations in reference to the agricultural laws. In the case of *Wallace et al. v. Woods*, 102 S. W. (2d) 91, the Court said:

"Primary rule for construction of statutes is to ascertain lawmakers' intent from words used, if possible, give language thereof, honestly and faithfully, its plain and rational meaning, and promote its objects."

Under Section 12535, R.S. Mo. 1929, it provided that the governor of Missouri and not any past governor 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 abortions 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. In order for the governor under this section to issue a proclamation, the investigation must be made and a report made back to the governor of Missouri which in the ordinary language of the section does not mean the past governor of Missouri. The proclamation of Henry S. Caulfield expired at the same time as his term of office. This section was made in anticipation of certain events to happen before the then governor of Missouri could make a proclamation.

In the case of State v. Smith, 74 S.W. (2d), page 27, the Court said:

"It is well settled that a law may be enacted to become effective on the happening of a future contingency. State ex rel. Maggard v. Palm, 93 Mo. 606, 1.c. 621."

#### CONCLUSION

In conclusion, will say that it is the opinion of this department that in order to bring any action under Sections 12535, 12536 and 12537, it will be necessary for the investigation to be made by the state veterinary

Mr. H. E. Curry

-9-

April 7, 1938

surgeon and a report made to the governor before he shall issue a proclamation as set out in Section 12535.

It is also the opinion of this department that the proclamation issued by Governor Caulfield is not still in force but expired with his term of office.

Respectfully submitted,

W. J. BURKE  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
(Acting) Attorney General

WJB:DA