

BOARD OF AGRICULTURE: State Veterinarian may make rules and regulations for the prevention of spreading of contagious and infectious diseases among cattle, horses and hogs.

September 21, 1938

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



Dear Sir:

This will acknowledge receipt of your request for an opinion under date of September 17, 1938, which is as follows:

"I am taking the liberty of referring to you correspondence from Prosecuting Attorney Fred C. Bollow of Shelbina, Missouri, concerning the practice of transporting dead animals over our highways to rendering plants, within and outside of the State of Missouri. We have also had a telephone conversation with Mr. George M. Davis, Prosecuting Attorney of Macon County, concerning this practice.

"Is there any authority in the law which gives the State Veterinarian power to interfere with or stop such movements or to prevent the movement of dead animals from farms to rendering plants? Does any other officer have such authority?

"Our attention has been directed to the following sections: Section 4339 of Article 8, Miscellaneous Offenses, and Section 4439 of the same article, Volume 1, Revised Statutes of Missouri, 1929, also

Sections 12,784, 12,786, and 12,787 of Article 4, and Section 12,819 of Article 8, Volume 2, Revised Statutes of Missouri, 1929.

"The farmers of this State have recently lost a good many horses and mules as a result of the recent widespread outbreak of Infectious Equine Encephalomyelitis, commonly known as Brain Fever or Sleeping Sickness, and, naturally, this has resulted in an increased number of dead animals being hauled over the public highways to rendering plants. Many citizens have complained to the Prosecuting Attorney of various Counties, demanding that something be done to stop this trafficking of dead animals.

"Most of our laws prescribe that the farmer shall dispose of dead animals by burning or burying them, which was quite generally practiced years ago; but, I am sorry to say that today very few of our farmers dispose of dead animals on their farm in this manner, since many send them to rendering plants.

"Section 12,526, Article 10, referring to horses quarantined on account of glanders or dourine states that 'the carcass or carcasses may be delivered to a dessicating or rendering plant for final disposition without exposing other horses or mules to the disease.' In your opinion, have I, as Live Stock Sanitary Official of the State of Missouri, authority under Section 12,526 to control the hauling and transporting over the public highways of carcasses or animals that have died of other infectious or contagious diseases?"

Section 9021, R. S. Mo. 1929, reads as follows:

"The said board of health shall take cognizance of any fatal diseases which may be prevalent amongst the domestic animals of this state, and ascertain the nature and causes of such disease, and shall, from time to time, publish the result of their investigations, with suggestions for the proper treatment of such animals as may be affected, and the remedy or remedies therefor."

Under Section 1, Session Laws of 1933, page 166, the old State Board of Agriculture was abolished in the newly created Section 12348, wherein "the Governor, by and with the advice and consent of the Senate, shall appoint a Commissioner of Agriculture, who shall hold his office for a term of four years, and who shall be in charge of the State Department of Agriculture, which is hereby created."

In Section 12353 of the same Session Laws, page 168, the Legislature said:

" * * * The Commissioner is hereby clothed with the power of reasonable quarantine in relation to the regulatory laws of the State Department of Agriculture, and it is further provided that the power of quarantine in relation to livestock diseases shall include poultry. * * *"

Section 12519, R. S. Mo. 1929, states:

"The state board of agriculture of the state of Missouri shall appoint a veterinary surgeon, to aid and assist in developing and protecting the livestock interests of the state of Missouri. * * *"

The State Board of Health and the State Veterinarian are empowered by statute to work in unison as to the safeguard of the health of the people of the State of Missouri. Section 12522, R. S. Mo. 1929, reads in part as follows:

"The state board of health may demand of the secretary of the state board of agriculture, through their president and secretary, the services of the state veterinary surgeon to aid them in the inspection of such infectious or contagious diseases as are transmissible to the human family, and in examination of meats, milk and foods, when, in the judgment of said state board of health, the assistance of this officer is necessary."

In regard to the situation set out in the letter addressed to you by Mr. Paul H. Bebermeyer, County Extension Agent, Edina, Missouri, in which he refers to a depot established for the deposit of dead animals, the prosecuting attorney could bring an injunction suit in the name of the State asking for the abatement of the nuisance.

In the case of State ex rel. Lamm, Pros. Atty. v. City of Sedalia, 241 S. W. 656, an injunction suit was brought by the prosecuting attorney in the name of the State asking for the abatement of a nuisance which is very similar to the nuisance described in the letter by Mr. Paul H. Bebermeyer. The court held that the nuisance could be abated, and on the complaints set out in your request, in which the truckers are hauling dead animals over the highway, an injunction could be brought at the relation of the State asking for the abatement of such nuisance, which would be sufficient to stop the practice described in your request. In the above case, State v. City of Sedalia, the City of Sedalia had entered into a contract with a private individual for the hauling of dead animals to the outskirts of the city where they were allowed to remain before burial. In the petition for injunction filed in said suit, among other things, the following was set out:

"But the plaintiff alleges that the defendants in and about the matters afore-

said have been guilty of such gross negligence and want of care as that said animals when hauled to the place of deposit as aforesaid have been permitted to lie on the ground some times two or three days at a time. That many of the animals would be skinned, and after the skins were removed from the bodies they would be allowed to remain on the ground unburied for long periods of time."

Also the court said in its opinion, l. c. 657:

"We are unable to agree with the learned trial court in the disposition made of the demurrer. The petition manifestly states facts which show that both the manner and place in and at which the dead animals are disposed of create a public nuisance. *Whitfield v. Town of Carrollton*, 50 Mo. App. 98, 103-104.

"The prosecuting attorney can properly represent the public in the bringing of a suit to restrain a public nuisance within his jurisdiction, for he has powers analogous to those exercised by the Attorney General of England. *State ex rel. v. Lamb*, 237 Mo. 437, 451, 141 S. W. 665. A private person cannot maintain injunction to restrain a public nuisance unless he shows a special injury to himself, differing in kind and not merely in degree from the general injury to the public. *I High on Injunctions* (4th Ed.) sec. 762; *Bothe v. Chicago, etc., R. Co.*, 181 Mo. App. 720, 723, 164 S. W. 709; *Coombs v. Fuller* (Mo. App.) 228 S. W. 870. From the allegations of the petition there is no damage suffered by an individual aside from and independent of the injury to the public. Hence it could not be maintained by a private individual. *Cummings Realty, etc., Co. v. Deere*, 208 Mo. 66, 106 S. W. 496. And a court of equity has jurisdiction to restrain

a public nuisance by injunction at the suit of the state or some proper officer representing the state. State ex rel. v. Lamb, supra; State ex rel. v. Springfield Gas, etc. Co. (Mo. App.) 204 S. W. 942."

The court in holding that the prosecuting attorney may bring such a proceeding, said:

"The state can maintain an action against a municipal corporation and the creators of a public nuisance through the prosecuting attorney, its public law officer. State ex rel. v. Vandalia, 119 Mo. App. 406, 418, 94 S. W. 1009. Under the circumstances of this case there is no more reason why a city cannot be enjoined for creating a public nuisance than any other corporation or person. Swanson v. Bradshaw (Mo. App.) 187 S. W. 268. And when under the circumstances herein set out it creates a public nuisance it can be dealt with the same as any individual, for 'there is no law declaring municipal corporations infallible or that their demands are incontestable.' City of Hannibal v. Richards, 82 Mo. 330, 337. See, also, High on Injunctions (4th Ed.) sec. 810, and Attorney General ex rel. v. City of Grand Rapids, 175 Mich. 503, 534, 543, 141 N. W. 890, 50 L. R. A. (N.S.) 473, Ann. Cas. 1915A, 968."

In the case of State v. Percy, 41 S. W. (2d) 403, 1. c. 409, the court even allowed the proceedings to be brought by a private individual on a nuisance that was in the nature of a public nuisance, and in so holding said:

"Counsel for relators also insist that the disposal of garbage by the city is a governmental function, which may not be enjoined by the courts at the suit of private persons, citing 43 C. J. 958, 959; Behrmann v. St. Louis, 273 Mo. 578, 201 S. W. 547; State ex rel. v. Sedalia (Mo. App.) 241 S.W. 656, 657; and Gibson v. Baton Rouge, 161

La. 637, 109 So. 339, 47 A.L.R. 1151, 1152. With the exception of the Louisiana case, which apparently departs from the general rule, these authorities do not support the proposition here advanced. In 43 C. J., sec. 1735, pp. 958 and 959, the prevailing doctrine is thus stated: 'A municipality which, in the performance of the work of collecting and removing garbage and other refuse, creates a nuisance is liable to persons suffering special injury therefrom, regardless of any act of negligence on its part; and in a proper case an injunction will issue.'

"To the same effect is the Sedalia Case, supra; also Edmondson v. City of Moberly, 98 Mo. 523, 11 S.W. 990; and Smith v. Sedalia, 152 Mo. 283, 302, 53 S. W. 907, 48 L.R.A. 711. In defining 'special injuries,' it is said in Wood on Nuisances (3d Ed.) sec. 605: 'A person residing, or having a place of business, within the immediate sphere of such a nuisance sustains injuries, which the rest of the public, who merely suffer an annoyance when casually coming in contact with it, do not sustain. Persons owning property within the sphere of the nuisance sustain that damage which is incident to the deterioration of property in such localities and from such causes, and those residing or doing business there are subjected to a degree of annoyance and personal discomfort which is far in excess of that sustained by other members of the public. To them, and each of them, no matter how numerous, the nuisance is private as well as public. It inflicts upon them, in all respects, all the injury requisite to enable them to maintain an action; and the fact that more persons are similarly situated in reference to the same nuisance in no measure operates to deprive them of their remedy.' Also, same authority, secs. 16 and 608; Joyce on Nuisances, sec. 13a; Edmondson v. Moberly, supra; Givens v. Van Studdiford, 86 Mo. 149, 158, 56 Am. Rep. 421; and Newman v. Marceline, 222 Mo. App. 980, 6 S.W. (2d) 659, 660."

The fifth paragraph in your request reads as follows:

"Most of our laws prescribe that the farmer shall dispose of dead animals by burning or burying them, which was quite generally practiced years ago; but, I am sorry to say that today very few of our farmers dispose of dead animals on their farm in this manner, since many send them to rendering plants.

After considerable research, we find no section where a farmer can dispose of the carcasses of swine or cattle that have died of infectious, spreading or dangerous disease by delivering them or allowing them to be delivered to a rendering plant. The only section by which the carcasses of diseased horses or mules can be delivered to or moved by a rendering plant is Section 12526, R.S. Mo. 1929, but that section only applies in cases where the horses or mules have been quarantined by the state veterinarian or his deputy, and an appraisement has been made, and the sheriff has slaughtered the horse or mule under the provisions of said section, and in that case the sheriff may deliver the carcass of the horse or mule which has been condemned to a desiccating or rendering plant for final disposition without exposing other horses or mules to the disease.

Section 12526, R. S. Mo. 1929, under which the above procedure is carried out, reads as follows:

"It shall be lawful for the owner of any horses or mules, in quarantine by the state veterinarian or his deputy on account of being affected with glanders or dourine, to apply to the county court of the county in which such horses or mules are quarantined for the appraisement and slaughter of said diseased horses or mules. A county judge, or duly appointed representative of the county court, with the owner, shall, as an appraising committee of two, appraise each affected horse or mule. If a county judge or the representative of the county court and the owner cannot agree upon the value, a disinterested third party shall be called in, and a majority decision shall be final as to appraisement. This appraisement shall be signed and certified by said appraisers to the county court of the county

in which said horses or mules are located, and said court shall draw a warrant payable to the owner of such condemned horses or mules for one-half of the appraised value: Provided, that in no case shall more than \$25.00 be paid by any county court as indemnity on any one horse or mule; and provided further, that no indemnity shall be paid by any county court for any horses or mules on account of glanders or dourine unless such horses or mules are appraised and killed within 30 days after being placed in quarantine by authority of the state veterinarian or his deputy. As soon as such horses or mules have been appraised, the sheriff of such county shall forthwith kill such condemned horses or mules and the owner shall burn or bury the carcass or carcasses thereof, where quarantined, except that such carcass or carcasses may be delivered to a desiccating or rendering plant for final disposition without exposing other horses or mules to the disease."

The State Veterinarian, who has charge of the quarantine and provision for the health of the public, together with the State Department of Health, may make such reasonable rules and regulations as to the disposal of diseased horses and mules as set out under Section 12526, supra, and especially so concerning the exposing of other horses or mules to the disease while being delivered to a desiccating or rendering plant. This was so held in the case of State ex rel. v. Goodier, 195 Mo. 551, l. c. 560, where the court in referring to the authority of the State Board of Health, said:

"The duties of the board are of an administrative or ministerial character, and therefore as long as its acts are within the scope of the exercise of a reasonable discretion it is free to act. (State ex rel. v. Gregory, 83 Mo. 123.)"

Though Section 12526, supra, gives the sheriff the discretion as to the disposition of the horse or mule slaughtered, he may either burn or bury the carcass or may deliver it to a desiccating or rendering plant, and the state veterinarian may supervise the disposal of said dead animal by way of delivering to a desiccating or rendering plant, or the carcass must be buried or burned as provided in the following sections herein set out.

Section 12787, R. S. Mo. 1929, reads as follows:

"That it shall be the duty of the owner, or other person in charge of any swine which shall die of any disease, to burn the carcass or carcasses on the premises where death occurred within twenty-four hours after its death."

Section 12819, R. S. Mo. 1929, reads as follows :

"All dead carcasses of cattle dying of Texas or Spanish fever or any other contagious or infectious disease shall be burned within twenty-four hours after the death of such animal or animals by the owner thereof or other person or persons authorized to do so by such owner. Upon trial and conviction in any court of competent jurisdiction of such owner for knowingly violating the provisions of this section such owner shall be deemed guilty of a misdemeanor."

The following sections mentioned in your request are not applicable to the points involved upon which you ask an opinion:

Section 4339, R. S. Mo. 1929, refers to throwing dead animals in wells and springs and placing near public roads.

Section 4439, R. S. Mo. 1929, refers to unloading cattle not under quarantine by an individual or corporation into a pen in which cattle are located, or have been, which were under quarantine.

Section 12784, R. S. Mo. 1929, refers to the removal of dead animals.

In reference to the letter attached to your request from Fred C. Bollow, Prosecuting Attorney of Shelby County, in which he complains of a trucker who has been coming in here from Iowa, picking up carcasses of animals and hauling them back into Iowa, will say that this matter has been passed on recently by an opinion from this office dated September 14, 1938, to Fred C. Bollow, Prosecuting Attorney, Shelbina, Missouri, a copy of which is attached to this opinion.

CONCLUSION

In view of the above authorities, it is the opinion of this department that under Section 12526, R. S. Mo. 1929, carcasses of horses or mules may be delivered to a desiccating or rendering plant for final disposition by the sheriff where the horses or mules at the time were under quarantine and were slaughtered according to the provisions of said section, but that carcasses of horses and mules which were not under quarantine and which died of spreading, infectious or contagious disease must be buried or burned in accordance with Sections 12787 and 12819, supra.

It is further the opinion of this department that the State Veterinarian, with the State Board of Health, has the authority to make rules and regulations controlling the hauling and transporting over the public highways of carcasses of animals that have been slaughtered in accordance with Section 12526, supra, and unless the animals have been slaughtered according to the provisions of Section 12526, such carcasses must be burned or buried.

It is further the opinion of this department that even though swine have died of cholera or any other infectious

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and spreading disease, under no consideration can they be hauled over the public highways to a rendering plant, but must be burned or buried in accordance with Section 12787, supra.

It is further the opinion of this office that cattle dying of Texas or Spanish fever or any other contagious or infectious disease shall not be hauled over the public highways to any desiccating or rendering plant, but must be burned within twenty-four hours after the death of such animal by the owner thereof in accordance with Section 12819, supra.

Respectfully submitted

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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