

AGRICULTURE: Contract between owner of cattle and with the
DISEASED CATTLE: federal and state department does not obligate
STATE'S LIABILITY: the State of Missouri to pay for cattle infected
FOR PAYMENT: with Bang's Disease which are destroyed pursuant
to such contract.

November 9, 1939

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



Dear Sir:

This is in reply to yours of recent date which is as follows:

"Inclosed please find copy of memorandum of agreement for the carrying on of cooperative work of control and eradication of Bang's disease of cattle in Missouri, signed by Dr. John R. Mohler, Chief of the United States Bureau of Animal Industry and by me as cooperating state official.

"At the time this agreement was signed the Federal Government was paying all indemnity on animals reacting to the test for Bang's disease. This plan was changed, effective May 1, 1939 when congress enacted a proviso whereby the Federal Government would not pay indemnity in excess of the amount paid by the state, county or municipality and as we do not have any proviso for the paying of indemnity in the State of Missouri, the Federal Government discontinued the payment of indemnity on reacting cattle, effective May 1, 1939. Since that time, owners of animals tested have signed a waiver agreement as per copy inclosed and you will note that the waiver agreement provides that payment cannot be made by the Federal Government unless the state

November 9, 1939

pays indemnity within two years from the date of appraisal of reactor cattle. This has caused us to wonder whether there is any liability on the part of the state and also whether the memorandum of agreement signed by me as cooperative official for the State of Missouri contains anything that might obligate the state to pay indemnity on reactor cattle.

"I would greatly appreciate it if you would let us have an opinion on this question."

Included with your request is a form of an indemnity waiver which is as follows:

"The Acts of Congress which provide funds for the payment of indemnities on cattle that have reacted to the test in our cooperative Bang's disease elimination work and are slaughtered after June 30, 1939, provide that Federal payments cannot be made unless the State also pays indemnity, within two years from the date of appraisal of reactor cattle.

"In accordance with the above, I hereby waive claim to any indemnities for the slaughter of my reactors to this one test unless the State also pays indemnity.

Owner's Signature

U. S. Bureau of Animal Industry."

Also, with your request is a form of memorandum agreement referred to in the letter which agreement is as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE,
BUREAU OF ANIMAL INDUSTRY

7/14/ 1934

"MEMORANDUM OF AGREEMENT REGARDING THE BLOOD TESTING OF CATTLE FOR BANG'S DISEASE IN THE STATE OF MISSOURI BY COOPERATION BETWEEN THE STATE OF MISSOURI AND THE BUREAU OF ANIMAL INDUSTRY OF THE UNITED STATES DEPARTMENT OF AGRICULTURE.

"A. The Bureau of Animal Industry of the United States Department of Agriculture agrees:

- "1. To detail a competent veterinary inspector to be known as the inspector in charge of the Bureau.
- "2. To detail additional veterinary inspectors and employ other necessary personnel to the extent of the means at hand.
- "3. To pay the salaries of Bureau inspectors and such traveling expenses as are incurred under Bureau instructions and authorized by the fiscal regulations of the United States Department of Agriculture.
- "4. To furnish the necessary blank forms and supplies for conducting this work, if not supplied by the State.
- "5. To pay indemnity for cattle slaughtered on account of reacting to the blood test for Bang's disease, in accordance with the regulations of the United States Department of Agriculture.

"b. The State Agrees:

"1. To cooperate in Bang's disease work in providing laboratory facilities and personnel for the operation of same and field personnel to the extent permitted by means available.

"2. To enforce State regulations governing the handling of herds of cattle under supervision for the detection of Bang's disease.

"c. The State and the Bureau of Animal Industry agree:

"1. That Bang's disease work shall be cooperative.

"2. That the inspector in charge of the work for the Bureau of Animal Industry shall confer with the proper State official at frequent intervals with a view of improving methods of this work.

"3. That all charts and other reports shall be rendered in accordance with instructions of the inspector in charge and the proper livestock official.

(Signed) J. R. Mohler
Chief of the Bureau of
Animal Industry, U. S.
Department of Agriculture.

(Signed) H. E. Curry
State Veterinarian of the
State of Missouri"

Both the indemnity waiver and the memorandum agreement seem to be in plain language and, therefore, it is not necessary to attempt to give them any other construction than what they really are.

In the case of State ex rel. National Life Ins. Co. v. Allen et al., 256 S. W. 737, 739, the court, in

considering the rule on construction of contracts, said:

"2. It is a cardinal rule of construction that when the language is plain there can be no construction because there is nothing to construe.

* * * * *

In *Blanke Bro. Realty Co. v. American Surety Co.*, 247 S. W. 797, 801, the court stated the rule as follows:

"* * * * Courts cannot write provisions into contracts not written by the parties to them. They can only enforce agreements as written."

Referring back to the memorandum and to the agreement between the owner of the livestock and the federal agency, we do not find any indication in these instruments of an intention to make the State of Missouri liable for the payment of stock which may be slaughtered pursuant to these agreements.

Even if the contracts attempted to make the State of Missouri liable, it would not be binding on the state without some act of the legislature authorizing same and an appropriation by the lawmakers to pay for such obligation. Our examination of the laws and of the appropriation for the Sixtieth General Assembly reveals that no such provisions were made.

CONCLUSION.

It is, therefore, the opinion of this department that the State of Missouri has no liability under the agreements which you have submitted, and that it is not obligated to pay any indemnity on reactor cattle which may be slaughtered under such agreements.

Respectfully submitted

APPROVED:

W. J. BURKE
(Acting) Attorney General

TYRE W. BURTON
Assistant Attorney General

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