

INDEMNITY:  
DISEASED ANIMALS:

Purchaser of a tubercular steer, which was purchased for butchering, is not entitled to indemnity even though the carcass was destroyed on order of State Veterinarian as unfit for consumption by human beings.

September 12, 1946

FILED  
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Honorable George Adams  
Prosecuting Attorney  
Audrain County  
Mexico, Missouri

Dear Sir:

We are in receipt of your letter of August 27, 1946, requesting an official opinion of this department, and reading as follows:

"The operator of a local meat market who kills his own meat for retail sale purchased a beef and after it was slaughtered noticed that it appeared diseased. He had the State Veterinarian come to Mexico for the purpose of testing the beef. The test showed that it was tubercular and he destroyed the same to prevent its sale and consumption by human beings.

"Section 1402 R. S. Missouri, 1939, and associated sections do not seem to be clear as to the question of indemnity due this merchant.

"I would appreciate your advising whether or not under the above conditions the merchant is entitled to indemnity for the beef which he has destroyed.

"Certainly he did the humane thing in calling the state Veterinarian's attention to the carcass and it seems wrong for him to have to stand all of the loss."

The general rule in regard to payment of moneys to an individual by the state is that no state official can pay out

the money of the state except pursuant to statutory authority authorizing and warranting such payment. State ex rel. Bybee v. Hackmann, 207 S. W. 64, 276 No. 110; State ex rel. Bradshaw v. Hackmann, 208 S. W. 445, 276 No. 600.

The statutes authorizing the payment of indemnity for neat cattle affected with tuberculosis are Sections 14196, 14199, 14200, 14201, 14202 and 14204, R. S. No. 1939.

Section 14196, R. S. No. 1939, provides that the owner of neat cattle affected with tuberculosis, and who shall have the same in quarantine under the provisions of article 11, Chapter 102, R. S. No. 1939, may have the same appraised and receive indemnity therefor.

Section 14199, R. S. No. 1939, provides that the owner of neat cattle affected with tuberculosis and condemned and quarantined on account thereof by the State Veterinarian, or his deputy, shall elect whether he will keep a part or all of the cattle affected with tuberculosis in isolation for breeding purposes, or whether he will have a part or all of such diseased neat cattle appraised and slaughtered. It is further provided in said section that all neat cattle for which indemnity is claimed by the owner shall be shipped under a legal permit in writing by the State Veterinarian, or his deputy, if such animals are to be killed within this state, or under a permit in writing by a representative of the United States Department of Agriculture if such cattle are to be killed at a point outside of this state.

Section 14200, R. S. No. 1939, provides for the owner receiving indemnity for the destruction of tuberculous cattle, to be paid by the county, state and federal government, and provides that a duly authorized agent of the State Department of Agriculture or a duly authorized agent of the United States Department of Agriculture, either, as the federal authorities may elect, acting with the owner, shall jointly constitute an appraising committee. If such committee fail to reach an agreement, a disinterested third party shall be called in and a majority decision shall be final. This section further provides that an itemized account of the appraisement of each individual head of cattle shall be made out and signed by the owner, the representative of the State Department of Agriculture, or a representative of the United States Department of Agriculture, and by the third party when such third party is called upon to act as a joint appraiser, and that said account shall be made out in triplicate, one copy to be sent to the Commissioner of Agriculture and one copy to the County Court. It is further provided in this section that after such appraisal

the condemned cattle shall be sent to slaughter, and a report of the net proceeds derived from the sale of such diseased cattle shall be ascertained by the Commissioner and deducted from the appraised value. The section further provides for the payment of certain percentages of the difference between the appraised value of such condemned cattle and the salvage from the sale thereof.

Section 14201, R. S. Mo. 1939, provides for the appraisal of neat cattle condemned on account of tuberculosis in Missouri, in cases not under State and Federal cooperation. The section further provides for the appraisal of the condemned cattle by a representative of the State Department of Agriculture or a member or representative of the County Court in the county where such neat cattle are located, acting with the owner of the condemned cattle. In case of disagreement a disinterested third party shall be called in as a member of the appraising committee, and a majority vote of the committee shall determine the appraisement of such neat cattle. The section further provides for the percentage to be paid by the state and the county in case such condemned cattle are sent to slaughter and the report of the difference between the appraised value of such cattle and the amount received as salvage.

Section 14204, R. S. Mo. 1939, provides for the shipment, after appraisal, of cattle condemned and in quarantine on account of tuberculosis, by their owner, under the supervision of the State Veterinarian, to any slaughtering plant which is provided with state or federal meat inspection service, to be slaughtered and disposed of under the rules of meat inspection.

Section 14202, R. S. Mo. 1939, provides, in part, that "no indemnity shall be paid for neat cattle affected with and quarantined on account of tuberculosis if such cattle became (a) diseased through any willful neglect or scheming on the part of the proprietor, or (b) which were already diseased when they came into the possession of said proprietor." This section further provides that "no indemnity whatsoever shall be paid by either the state or county for neat cattle condemned on account of tuberculosis unless the owner thereof co-operates with the state or Federal authorities in having all of the cattle owned by him tested for tuberculosis and by carrying out the disinfection of his premises according to official instructions, as far as necessary, to complete the eradication of the disease on his premises."

It is clear from the above quoted statutory provisions that two things are necessary in order to receive any indemnity for the slaughter of neat cattle affected with tuberculosis. The first is that said neat cattle must be in quarantine. Second, the procedure as laid down by the statutes regarding appraisal of said neat cattle by a committee composed of the owner and a representative of the State or Federal Department of Agriculture, or in certain cases a member or representative of the County Court, and in cases of disagreement a disinterested third party, must be followed.

It is clear that the statutory provisions above quoted provide for the payment of indemnity to the owner of neat cattle, and there is no provision made for the payment to any slaughterer who may purchase said cattle, but it is provided that any of said tuberculous cattle which are to be slaughtered must be marked and shipped under the direction of the State Veterinarian, and their salvage value determined and the indemnity paid on the difference between the salvage value received from slaughtering such animals and their appraised value. The provision in Section 14202, R. S. Mo. 1939, that no indemnity will be paid when cattle were already diseased when they came into the possession of an owner further limits the payment of any indemnity in this case.

It is clear that no statutory authority exists which would authorize the state to pay any indemnity for the destruction of a steer which was affected with tuberculosis and which was slaughtered by the operator of a local meat market.

#### CONCLUSION

It is the opinion of this department that the operator of a local meat market who purchased a steer which was affected with tuberculosis, and which was destroyed because it was unfit for consumption by human beings, is entitled to no indemnity from the state because of such destruction.

Respectfully submitted,

C. B. BURNS, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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