

AGRICULTURE: 1) Commissioner of Agriculture has no independent power to
ANIMALS: promulgate rule requiring testing for Brucellosis of cattle
BRUCELLOSIS: being brought into Mo. and exclusion or other disposition
ADMINISTRATIVE of those found to be infected with such disease. Sec. 267.
LAW: 260, RSMo 1949, confers such power upon him acting jointly
ly with the State Vet. and representatives of the U. S. Dept. of Agri.
2) Com. of Agri. has no independent power to promulgate rules governing
transportation of animals to and from community sale barns and terminal
stockyard markets but may make such rules relating only to suppression of
Bang's Disease conjointly with State Vet. and representatives of the U.S.
Dept. of Agri. 3) The power of quarantine extends only to diseased stock
and those capable of carrying or causing the disease. The power of quaran-
tine cannot be extended by rule or regulation. 4) State Vet. may refuse
to permit cattle owner operating under Plan C of Sec. 267.292, RSMo., Cum.
Supp., 1951, to move cattle of adult herd without test showing freedom
from Brucellosis. 5) Sec. 267.130, RSMo 1949, covers all dangerous diseases
of cattle of a contagious, infectious or spreading character.

October 22, 1953

Honorable L. A. Rosner, DVM
State Veterinarian
Department of Agriculture
Jefferson City, Missouri

Dear Sir:

We have received your opinion request dated July 27, 1953,
which request reads as follows:

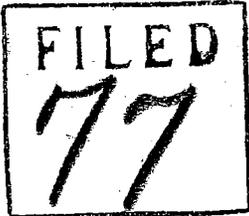
"Inasmuch as we are contemplating the writing of new regulations for an expanded program of Brucellosis control and eradication, I respectfully request a review of all of the statutes pertaining to Brucellosis and Diseased Animals and specifically Sections 267.130, 267.240, 267.250, 267.260, 267.280, 267.290, 267.310, 267.330 and 267.430 and House Bill No. 36 of the 66th General Assembly.

"In formulating the new program we need specifically to know:

"1. Is sufficient authority granted to us under House Bill 36 and Section 267.130, Revised Statutes of Missouri, 1949, to make and promulgate regulations setting down requirements for Brucellosis on cattle entering the State of Missouri?

"2. For promulgation of rules and regulations covering animals moving out of community sale barns and terminal stockyard markets.

"3. Authority to quarantine an entire herd suspected of being infected with Brucellosis.



Honorable L. A. Rosner, DVM

Suspicion of infection in a herd may be on the basis of a positive test for Brucellosis obtained on one or more animals out of this herd.

"4. Authority to quarantine a herd operating under Plan C. in which no test is made of the adult herd and the owner elects to follow a program of vaccination of calves only. In other words can we quarantine this herd with the requirement that no animals be shipped except on permit and to slaughter unless negative to the blood test?

"5. Is sufficient authority granted under Statute 267.260 for the promulgation of rules and regulations necessary to the control and eradication of Brucellosis?

"In addition to the above would Section 267.130 permit promulgation of rules and regulations for the control and eradication, including necessary quarantines, of any dangerous disease of a contagious, infectious or spreading character not specifically referred to in the statute itself, as for example atrophic rhinitis in swine, infectious gastroenteritis of baby pigs, vesicular exanthema, vesicular stomatitis, leptospirosis, listeriosis and other diseases which might make their appearance.

"I should also like to know if this department has the authority to quarantine an entire herd for Tuberculosis when we have reason to suspect Tuberculosis in this herd, based upon the finding of lesions of Tuberculosis in an animal shipped to slaughter or in cases where a reactor has been removed previously from the herd and the owner refuses to retest the herd."

We shall take up the questions in the order in which you have stated them in your letter.

Honorable L. A. Rosner, DVM

QUESTION NO. 1: "Is sufficient authority granted to us under House Bill 36 and Section 267.130, Revised Statutes of Missouri, 1949, to make and promulgate regulations setting down requirements for Brucellosis on cattle entering the State of Missouri?"

Presumably by this question you contemplate the promulgation of a rule requiring that cattle being brought into the state be tested for Brucellosis and exclusion of those that prove to be infected with the disease.

Section 267.130, RSMo 1949, grants no authority for making such a rule. The only rule-making power contained in such section is given by the following words contained in Subsection 1 of such section:

"* * * unless the said veterinary surgeon is satisfied that it is impracticable to quarantine as herein set forth, then he shall prescribe in writing such other rules and regulations as he may deem best."

This refers only to rules prescribing the manner of quarantine of infected stock, when it is impracticable to quarantine in the manner prescribed in the preceding part of said Subsection 1.

Subsection 2 of Section 267.296, R. S. Mo., Cum. Suppl., 1951, to which you refer as a part of House Bill No. 36 of the 66th General Assembly reads as follows:

"2. The commissioner of agriculture is hereby authorized and directed to make all reasonable and needful rules and regulations for the carrying out of sections 267.292 to 267.298, including rules and regulations governing the importation into the state of all livestock, and including shipments from public livestock markets operating under federal or state inspection within the state."

Although the latter portion thereof standing alone purports to grant the authority for the regulation or regulations you contemplate, we believe this portion of the statute is limited by the preceding portion of the subsection so that the commissioner's regulations would be authorized only in so far as "reasonable and needful for carrying out Sections 267.292 to 267.298, R. S. Mo., Cum. Suppl., 1951." These sections authorize the commissioners to supply Brucella vaccine and veterinary service free of cost to persons who co-operate with the Bureau of Animal Industry of the United States Department of Agriculture and the Missouri Department

Honorable L. A. Rosner, DVM

of Agriculture in a program for eradication of Bang's Disease by participating in certain plans set up in Section 267.294, R. S. Mo., Cum. Supp., 1951. It could not be said that the type of regulation contemplated by Question No. 1 of your request is "needful or reasonable" to implement these sections.

The only authority granted in this general area is in Section 267.240, RSMo 1949, providing that the Governor may order the State Veterinarian to visit any state or territory, where Bang's Disease is said to exist and investigate and report to him. Then the Commissioner and State Veterinarian, subject to the approval of the Governor, may "arrange and adjust such rules and regulations as safety may demand for the transportation of livestock through or into this state" from any state, territory or country where Bang's Disease may exist.

Such regulations, however, would apply only to cattle brought in from particular areas outside the state where Bang's Disease was found to exist and would require the approval of the Governor.

Section 267.330, RSMo 1949, places some restrictions on importation of cattle from outside the state, requiring a certificate that they are free from symptoms of infectious or contagious disease. This section, however, confers no rule-making power upon the Commissioner of Agriculture.

Section 267.260, RSMo 1949, we believe does not confer upon the Commissioner the independent authority to make the rules contemplated by this question, but does confer such power upon him conjointly with the State Veterinarian and representatives of the United States Department of Agriculture. This section of the statutes is discussed further under Question No. 2, infra, which discussion is applicable to the rules contemplated by this question.

QUESTION NO. 2: "For promulgation of rules and regulations covering animals moving out of community sale barns and terminal stockyard markets."

The rules and regulations contemplated by this question would require testing of all cattle consigned for sale to a community sales barn or a terminal stockyard market and would provide that the Department of Agriculture might quarantine any cattle suffering from a contagious or infectious disease.

In accordance with the discussion of subsection 2 of Section 267.296, Cum. Supp., 1951, we believe that such regulations would not be "reasonable and needful" to implement Sections 267.292 to 267.298, Cum. Supp., 1951, and hence it does not authorize the Commissioner to promulgate the regulations contemplated by the question.

Honorable L. A. Rosner, DVM

Section 267.260, RSMo 1949, reads as follows:

"267.260. Control of Bang's disease-- acceptance of federal rules.--For the purpose of controlling Bang's disease in neat cattle and cooperating with the United States department of agriculture in suppressing and combating Bang's disease, the commissioner of agriculture may accept and adopt, on behalf of the state, the rules and regulations prepared by the United States department of agriculture relating to the suppression of such disease and cooperate with the authorities of the United States in the enforcement of their provisions; or the commissioner of agriculture may follow such other procedure as to inspection, condemnation, disinfection, disposal and other procedure, reasonably necessary in the suppression of such disease, as may be agreed upon and adopted by the commissioner of agriculture and the state veterinarian and the representatives of the United States department of agriculture. Within the amounts, which may be appropriated for this purpose, the state may pay such proportion of the expenses incurred in suppressing or combating such disease under the provisions of this section as shall be determined by and mutually agreed upon with the United States department of agriculture."

This section purports to authorize the Commissioner to adopt on behalf of the state the rules of the United States Department of Agriculture, relating to suppression of Bang's Disease, and to co-operate with the United States Department of Agriculture in their enforcement. It also provides that the Commissioner of Agriculture may follow such other procedure as to inspection, condemnation, disinfection, disposal and other procedure, reasonably necessary in the suppression of such disease as may be agreed upon by the Commissioner of Agriculture, the State Veterinarian and representatives of the United States Department of Agriculture.

This statute, we believe, confers upon the Commissioner of Agriculture the power to make rules and regulations governing the transportation of animals moving to and from community sales barns and terminal stockyard markets, so long as such rules relate to "inspection, condemnation, disinfection, disposal and other procedure,

reasonably necessary in the suppression of such disease," and so long as such rules are "agreed upon and adopted by the Commissioner of Agriculture and the State Veterinarian and the representatives of the United States Department of Agriculture." It does not confer upon the Commissioner of Agriculture the power independently to make such rules.

The use of the word "procedures" is strange, and ordinarily would refer to the manner of proceeding, or method. Reading the statute as a whole, however, we think the word is intended to mean substantive rules relating to the suppression of Bang's Disease, and we so interpret it.

QUESTION NO. 3: "Authority to quarantine an entire herd suspected of being infected with Brucellosis. Suspicion of infection in a herd may be on the basis of a positive test for Brucellosis obtained on one or more animals out of this herd."

Section 267.130, RSMo 1949, is the only power given in the law to quarantine particular livestock (as distinguished from livestock from particular geographical areas as in Section 267.240 and 267.250, RSMo 1949, infected with Bang's Disease.) Although Bang's Disease is not specifically mentioned in this section, it is included in the phrase "any other dangerous disease of a contagious, infectious or spreading character." Subsection 1 of the said Section 267.130 reads as follows:

"267.130. Quarantine--notification to county court--procedure.--1. If, upon investigation, said veterinary surgeon shall be satisfied that such livestock is suffering from or infected, or capable of infecting with or causing what is known as glanders, farcy, tuberculosis, contagious pleuropneumonia, Texas fever, rinderpest, foot and mouth disease, or any other dangerous disease of a contagious, infectious or spreading character, against which he may think best to quarantine, he shall immediately quarantine the same by placing it in pens, barns or sheds, or fields, completely separated from other susceptible stock not so diseased or infected, until such diseased stock shall be disinfected or completely recovered, and its release ordered by the state veterinary surgeon or his deputies, or shall have been killed or disposed of as herein provided; and all barns, sheds or pens containing the diseased stock shall be surrounded with a good and sufficient fence to prevent any other stock from approaching nearer than one hundred feet to the barn or pen containing such diseased stock, unless the said

Honorable L. A. Rosner, DVM

veterinary surgeon is satisfied that it is impracticable to quarantine as herein set forth, then he shall prescribe in writing such other rules and regulations as he may deem best."

This section, by requiring that stock which is "suffering from or infected or capable of infecting with or causing * * * any other dangerous, infectious or spreading character" be separated from other susceptible stock "not so diseased or infected" until such "diseased stock" shall be "disinfected or completely recovered" contemplates that only diseased stock or those capable of carrying the disease be quarantined. There is no authority for quarantining of an entire herd on the basis of one or two cows therefrom being infected with the disease -- unless it may be said that the other cattle in the herd by reason of having been in contact with those infected would be capable of carrying the disease. Cattle capable of infecting with or causing the disease in other cattle may be quarantined under this section.

Neither does this section or any other contain any authority to broaden by rules and regulations the quarantine power beyond the confines of this section.

QUESTION NO. 4: "Authority to quarantine a herd operating under Plan C in which no test is made of the adult herd and the owner elects to follow a program of vaccination of calves only. In other words can we quarantine this herd with the requirement that no animals be shipped except on permit and to slaughter unless negative to the blood test?"

"Plan C," referred to in this question, is defined as follows in Section 267.294, R. S. Mo., Cum. Supp., 1951:

"(3) 'Plan C' means calfhood vaccination without test of any part of the herd and the plan is confined to those herds in which movement of animals is restricted to special permits issued by the state veterinarian."

Any person operating under this plan will have signed the agreement provided for in Section 267.292, Cum. Supp., 1951. Although there is no authority to quarantine his herd, he is not permitted to move any animal except on permit from the State Veterinarian. Such permits could be subject to any reasonable condition the State Veterinarian chose to impose -- including the condition that they be tested and found Bang's Disease free.

Honorable L. A. Rosner, DVM

The effect, therefore, would be the same as that of a quarantine.

QUESTION NO. 5: "Is sufficient authority granted under statute 267.260 for the promulgation of rules and regulations necessary to the control and eradication of Brucellosis?"

We believe the discussion under Question No. 2, supra, is applicable and fully answers this question.

QUESTION NO. 6: "In addition to the above would Section 267.130 permit promulgation of rules and regulations for the control and eradication, including necessary quarantines, of any dangerous disease of a contagious, infectious or spreading character not specifically referred to in the statute itself, as for example atrophic rhinitis in swine, infectious gastroenteritis of baby pigs, vesicular exanthema, vesicular stomatitis, leptospirosis, listeriosis and other diseases which might make their appearance."

Section 267.130, supra, is limited in its scope as to the rules and regulations permitted to be promulgated. The only authority for the promulgation of rules and regulations is contained in the last sentence of subsection 1 of that statute. It reads as follows:

"* * * unless the said veterinary surgeon is satisfied that it is impracticable to quarantine as herein set forth, then he shall prescribe in writing such other rules and regulations as he may deem best."

The rules and regulations authorized by this section relate only to the method of quarantine and will not permit other rules relating to the suppression and eradication of the disease.

So far as the quarantine power is concerned, however, and the power to make rules relating to the method of quarantine, the statute is certainly broad enough to cover diseases other than those named so long as they are "dangerous diseases of a contagious, infectious or spreading character."

You ask whether you can quarantine an entire herd for Tuberculosis when you have discovered lesions of Tuberculosis in an animal shipped from the herd. In our judgment no such power exists unless it is that cattle exposed to the disease may be said to be

Honorable L. A. Rosner, DVM

capable of infecting with or causing Tuberculosis in other cattle. The discussion under Question No. 3, relating to Bang's Disease, is applicable also to Tuberculosis.

CONCLUSION

It is the opinion of this office that:

1.) Section 267.130, RSMo 1949, confers upon the Commissioner of Agriculture no power to promulgate a rule requiring the testing for Brucellosis of cattle being brought into Missouri, and the exclusion as other disposition of those found to be infected with such disease. Neither does Subsection 2 of Section 267.296, RSMo, Cum. Supp., 1951, grant such power, said section conferring power only to make rules to implement Sections 267.292 to 267.298, R. S. Mo., Cum. Supp., 1951. However, Section 267.260, RSMo 1949, confers upon the Commissioner of Agriculture, acting conjointly with the State Veterinarian and representatives of the United States Department of Agriculture, the power to adopt such rules.

2.) The only power conferred upon the Commissioner of Agriculture to promulgate rules and regulations governing transportation of animals to and from community sales barns and terminal stockyard markets is that given by Section 267.260, RSMo 1949, which gives the Commissioner of Agriculture the authority to make such rules relating to the suppression of Bang's Disease only, as may be agreed upon and adopted by the Commissioner, the State Veterinarian and representatives of the United States Department of Agriculture. The Commissioner has no such authority independently.

3.) The State Veterinarian has no power to quarantine an entire herd of cattle on the basis that one or two cattle of such herd is known to have Brucellosis, or Tuberculosis, unless the other cattle of such herd, by reason of having been in contact with infected cattle, are capable of carrying or causing the disease. The power of quarantine extends only to diseased stock and those capable of carrying or causing the disease. The power of quarantine cannot, by rule, be extended beyond the confines of Section 267.130, RSMo 1949.

4.) There is no power to quarantine the adult herd, not infected with Brucellosis, the owner of which is cooperating in a Brucellosis control program under "Plan C". However, such owner will have voluntarily submitted to a plan under which he is not permitted to move any animal except on permit from the State Veterinarian, which permit may be conditioned on the testing of such animal and a result of freedom from the disease.

5.) The rule-making power of Section 267.130, RSMo 1949, relates only to the method of effecting the quarantine, and does

Honorable L. A. Rosner, DVM

not confer the power, by rule, to extend the quarantine power. Such section covers all dangerous diseases of a contagious, infectious or spreading character.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. W. Don Kennedy.

Very truly yours,

JOHN M. DALTON
Attorney General

WDK/mv