

STRAY ANIMALS: The sheriff is not authorized to employ private citizens at public expense to take up, keep or feed any animal or animals of the species of horse, mule, ass, cattle, swine, sheep or goat which may be found running at large outside the enclosure of the owner under Section 270.010, RSMo 1959. This is a duty specifically delegated to the sheriff and he is responsible for its performance.

August 30, 1961



Honorable Clarence Overbay, Jr.
Prosecuting Attorney
Dunklin County
Kennett, Missouri

Dear Mr. Overbay:

Your request for an official opinion from this Department, dated May 31, 1961, reads as follows:

"In Re: 1959 Missouri Revised Statute
Section 270.010.

"Dear Sir:

"Under the above statute is the Sheriff of Dunklin County entitled to hire necessary help in rounding up animals named in this statute, and entitled to hire someone to keep said animals until the rightful owner is notified and given an opportunity to pick them up?

"I will give you a short illustration of our problem here in Dunklin County. The stock law was adopted in Dunklin County in 1920. Most of the land is flat and only a few persons have farm animals anymore. We have a few individuals raising mostly cattle and hogs who will let their fences get in such a state that their stock cannot be kept in. The animals then roam over their neighbors property destroying all kinds of crops."

Your question involves the right of the sheriff to hire help at county expense in rounding up animals running at large. Section 270.010, RSMo 1959, makes it unlawful for the owners of

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certain animals to permit such animals to run at large outside the enclosure of the owner. If such animals are found running at large, Section 270.010 provides: ". . . it is hereby made the duty of the sheriff or other officer having police powers, on his own view, or when notified by any other person that any of such stock is so running at large, to restrain the same forthwith . . .," and the last sentence of this section provides: "Any failure or refusal on the part of such officer to discharge the duties required of him by this section shall render him liable on his bond to any person damaged by such failure or refusal" Section 270.050 also provides that in cases where appraisers are appointed to assess damages the officer shall be entitled to a certain fee and mileage in serving notice on the appraiser.

The above described duties of rounding up animals running at large by the sheriff are mandatory. He is the proper officer to enforce the terms of Chapter 270. It is not within the discretion of the sheriff to decide whether his responsibilities are too onerous and therefore the county should hire private citizens at county expense to round up stray animals.

This is a duty specifically delegated to the sheriff and he is not entitled to any additional compensation therefor except as specifically provided in the statutes. The Supreme Court of Missouri in the case of Nodaway County v. Kidder, 129 S.W. (2d) 860, stated:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer."

It appears from the above chapter that the sheriff is charged with the responsibility of rounding up and confining animals running at large. This chapter does not provide any authority for the sheriff to incur general obligations on behalf of the county while performing these duties.

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CONCLUSION

It is our conclusion that the sheriff is not authorized to employ private citizens at public expense to take up, keep or feed any animal or animals of the species of horse, mule, ass, cattle, swine, sheep or goat which may be found running at large outside the enclosure of the owner under Section 270.010, RSMo 1959. This is a duty specifically delegated to the sheriff and he is responsible for its performance.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Clyde Burch.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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