

AGRICULTURE: TIME:--The time within which an act is to be done is computed by excluding the first day and including the last."

March 4, 1938



Doctor H. E. Curry
State Veterinarian
Department of Agriculture
Jefferson City, Missouri

Dear Dr. Curry:

We wish to acknowledge your request for an opinion wherein you state as follows:

"We have a point in question concerning the payment of indemnity on a cow belonging to Kuhne Bros. of Troy, Missouri, which was condemned on account of reacting to the tuberculin test.

This cow was tested under the provisions of cooperative Federal and State tuberculosis eradication program, which provides that the Federal government shall pay one-third, the State one-sixth, and the County one-sixth of the difference between the appraised value and salvage.

The local Inspector in Charge of U.S. Bureau of Animal Industry operations in Missouri declines to certify to the Kuhne Bros. claim, which amounts to \$50.00 (representing the portion to be paid by the Federal Government), alleging that the animal was not slaughtered within the thirty day period as set forth in Section 3 of Regulation 4, B.A.I. Order 344, which reads as follows:

"The tuberculous cattle shall be destroyed within a period of 30 days of the date of appraisal, except that in extraordinary and meritorious cases and at the discretion of the Chief of Bureau, such time limit of 30 days may be waived; however, no such waiver shall be given in order to allow a cow to produce a calf."

This animal was appraised August 17, 1937, and was sent to Swift & Company, St. Louis, by Kuhne Bros., September 15, and was slaughtered the morning of September 16.

Kuhne Bros. have written us several letters about this claim. They are anxious to have it settled; therefore, I would greatly appreciate it if you will give us an opinion in writing as to whether or not this animal was slaughtered within the thirty day period, as prescribed by Missouri laws under which we are carrying on cooperative tuberculosis eradication work."

Section 655 R. S. Missouri 1929, sets out various rules for construction of statutes and declares the rule to be followed in computing the time within which an act shall be performed, as follows:

"****fourth, the time within which an act is to be done shall be computed by excluding the first day and including the last****".

62 C. J. Section 30, page 984, declares the rule, as follows:

"The rule most commonly adopted, and which in many jurisdictions has either expressly or in substance, been provided by statutes, which have been held to be merely declaratory

of the existing common law rule, is that the time within which an act is to be done is to be computed by excluding the first day, and including the last, that is, the day on which the act is to be done*****"

The Federal Courts have adopted the same rule, for in the case of Sugilschiffer vs. Penn Mut. Life Ins. Co. 248 Fed. 226, 160 C.C.A. 304, we find the following language:

"It is also, we take it, settled by the weight of authority that the time within which an act is to be done is to be computed by excluding the first day and including the last. Sheets vs. Selden, 2 Wall. 177, 17 L. Ed. 822, Eliot National Bank v. Gill (D.C.) 210 Fed. 933, 940."

And in a more recent case, In Re: Hamilton, 29 F. (2d) 281, the Court said:

"The general rule in computing time is to exclude the first day and include the last."

The month of August has thirty-one days. So following the rule of excluding the first day, which was August 17th, the day of appraisal, and including the last day which was September 16th, the day of slaughter, we have a total of twenty-nine days.

From the foregoing we are of the opinion that the animal was slaughtered within the thirty day period whether the act be construed under state or federal laws.

Respectfully submitted,

APPROVED:

MAX WASSERMAN,
Assistant Attorney General

J. E. TAYLOR
(Acting) Attorney General