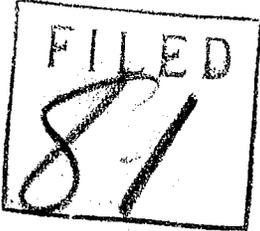


ANIMALS: : Horses owned by a resident of a township which has not voted
: to enforce the provisions of Chapter 270, RSMo 1949, to re-
STOCK LAW: : strain animals from running at large may be restrained under
: said Chapter if such animals go into a township which has
: voted to come under the stock law and break the enclosure
: of a resident of that township. Under Chapter 271 they may
: be dealt with as strays. The sheriff is a proper and auth-
: orized person to enforce the terms of said Chapter 271 when
: animals are running at large in violation of the stock law,
: under said Chapter 270, and have been deemed to be strays.

.....

January 27, 1955



Honorable William E. Seay
Prosecuting Attorney
Dent County
Salem, Missouri

Dear Mr. Seay:

This will be the opinion you requested from this office asking in Question Number One if the provisions of Chapter 270, RSMo 1949, are applicable to animals of a resident of a township that has not elected to come under the terms of said chapter, and whether, in Question Number Two, the sheriff of the county is a proper and authorized person to enforce the provisions of Chapter 271, relating to strays, dealing with animals running at large in violation of the provisions of said Chapter 270 where the owner of such animals fails, after notice, to pay a reasonable compensation for the taking up, keeping and feeding of such animals, or, if, in Question Number Three, the sheriff is not a proper and authorized person to enforce the provisions of said Chapter 271, and the sheriff has been notified according to the terms of Section 270.010, what procedure shall be followed in order to classify and sell such animals as strays.

Your letter requesting an opinion on each of the several questions reads as follows:

"I would like to have your office's opinion with reference to the following set of facts:

"A resident of this county lives in a township which has not elected to come under the provisions of Chapter

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270 1949 M.R.S. which restrains animals from running at large. This individual keeps several head of horses and three of said horses have gone into a township which restrains animals from running at large and broke the enclosure of a resident of the township where animals are restrained.

"I should like to have your opinion as to the following:

"1. Is Chapter 270 of the 1949 M.R.S. applicable to animals of a resident of a township that has not elected to come under the provisions of said chapter?

"2. Section 010 of Chapter 270 states that if an owner is notified and fails to make compensation for taking and feeding said animals or if the owner is unknown that the animals shall be dealt with in the same manner as strays and I should like to know if a sheriff is a proper and authorized person to perform the dictates of Chapter 271 1949 M.R.S.

"3. If a sheriff is not a competent person to execute the provisions of Chapter 271 1949 M.R.S. and the sheriff has been notified pursuant to the provisions of Section 010 of Chapter 270 1949 M.R.S., what procedure must be followed in order to classify and sell said animals as strays?"

Section numbers noted herein refer to RSMo 1949.

Considering your first question as to whether Chapter 270 is applicable to animals owned by a resident of a township that has not elected to come under the terms of said chapter but who permits such animals to run at large and go into a township which has elected to come under the terms of said Chapter 270, and have broken the enclosure of a resident of that township, we refer you to the opinion of this office, dated April 30, 1954, which holds:

"It appears obvious that the enforcement or suspension of the law in the place where

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the cattle are actually located is controlling, and that whether the stock law is in force at the place of the residence of the owner is immaterial. This conclusion is supported by *Spitler vs. Young*, 63 Mo. 42. In that case, the owner of certain hogs resided outside of the limits of the town of Trenton. The town of Trenton had adopted an ordinance authorizing the marshall to seize and restrain any hogs found running at large in the town limits. Plaintiff's hogs had escaped from their pen outside of the town limits and were found by the marshall on the streets of Trenton. The Supreme Court made this statement as to the applicability of the ordinance of the town of Trenton to a non-resident owner, l.c. 44:

"That the plaintiff was a non-resident cannot have material effect or alter the case. It is true that the ordinance of a municipal corporation can have no extra-territorial force; but persons or property coming within the territorial limits of the corporation, come under its authority."

Considering the facts stated in your request the opinion of April 30, 1954, and the case of *Spitler vs. Young*, 63 Mo. 42, therein cited, and quoted in part, determine your first question. We therefore hold that the terms of Chapter 270 are applicable to animals which are the property of a resident of a township that has not elected to come under the provisions of said chapter, when and if such animals go into a township which has elected to adopt and has adopted the law restraining animals from running at large and have broken the enclosure of a resident of that township. Such animals may be taken up and restrained and dealt with fully under said Chapter 270.

Your second question is whether the sheriff is a proper and authorized person to enforce the provisions of Chapter 271 relating to strays under the terms of Section 270.010 respecting animals running at large in violation of the provisions of said Chapter 270

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where the owner of such animals has been notified, in writing, of the taking up of animals and the amount of compensation due for their feeding and keeping and the amount of damages claimed therefor according to the terms of said Section 270.010, and if, upon such notice, the owner fails to make compensation therefor under the provisions of said chapter such animals shall be deemed strays and shall be dealt with in the same manner as required by law with respect to such property as strays, under the stray law.

Section 270.010, specifying the duties of the sheriff, as they may be required respecting animals running at large in violation of the stock law, under Chapter 270, and under Chapter 271, in case such animals are deemed to be strays to be dealt with as such under Chapter 271, including the duty respecting the provision that any person or the sheriff, on his own view, when notified by any other person that such animals are running at large, and specifying the conditions under which the sheriff is required to restrain the same and deal with them as strays, reads as follows:

"It shall be unlawful for the owner of any animal or animals of the species of horse, mule, ass, cattle, swine, sheep or goat, in this state, to permit the same to run at large outside the enclosure of the owner of such stock, and if any of the species of domestic animals aforesaid be found running at large, outside the enclosure of the owner, it shall be lawful for any person, and 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 such person or officer shall, within three days, give notice thereof to the owner, if known, in writing, stating therein the amount of compensation for feeding and keeping such animal or animals and damages claimed, and thereupon the owner shall pay the person, or officer, taking up such animal or animals a reasonable compensation for the taking up, keeping and feeding such animal, or animals, and shall also pay all persons damaged by

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reason of such animals running at large, the actual damages sustained by him or them; provided, that said owner shall not be responsible for any accident on a public road or highway if he establishes the fact that the said animal or animals were outside the enclosure through no fault or negligence of the owner. If the owner of such stock be not known, or if notified and fails to make compensation for the taking up, feeding and keeping of animals taken up under the provisions of this chapter, the same shall be deemed strays, and shall be dealt with in the same manner as required by law with respect to such property as strays, under the stray law. 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, which damages may be sued for and recovered in any court of competent jurisdiction."

It clearly appears from the provisions of said Section 270.010 that the Legislature intended the sheriff to be and constituted him a proper and authorized person acting in his official capacity to perform the duties imposed upon him by Section 270.010 in carrying out the terms of Chapter 271 relating to strays. Section 270.010 is mandatory. It provides a civil penalty against such officer who, having such duties, fails to discharge the duties required of him under said section, by making such officer liable in damages on his bond to any person damaged.

We believe under the mandatory terms of this section that the sheriff is a proper and authorized person to enforce the terms of Chapter 271 where animals under Section 270.010 are so deemed to be strays, and are subject as such to all the terms of said Chapter 271. This, we believe, answers Question Number Two submitted in your request.

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Having answered your second question by holding that the sheriff is a proper and authorized person to execute the terms of Chapter 271 relating to strays, as the duties imposed upon him by Section 270.010 require respecting the disposition of animals running at large in violation of the stock law, the third question submitted in your request needs no further consideration or comment.

CONCLUSION.

It is, therefore, considering the premises, the opinion of this office that:

1) The terms of Chapter 270, RSMo 1949, are applicable to animals belonging to a resident of a township that has not elected to come under the terms of said chapter, but which owner permits such animals to run at large and go into a township which has elected to come under the terms of said chapter and have broken the enclosure of a resident of that township;

2) That the terms of Section 270.010 expressly constitute the sheriff a proper and authorized person to execute the provisions of Chapter 271 relating to strays as such provisions relate to the terms of Section 270.010 which provide when and under what circumstances such animals are to be deemed strays and make such animals and the disposition of them subject to all the terms of said Chapter 271;

3) That the answer here supplied to Question Number Two renders further consideration or attention to Question Number Three, submitted in your request, unnecessary.

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

Very truly yours,

JOHN M. DALTON
Attorney General