

AGRICULTURE:
APPROPRIATION FOR CONTROL
OF BANG'S DISEASE:
AUTHORITY OF COMMISSIONER
TO ENTER INTO CONTRACTS
CONCERNING SAME:
LIABILITY OF THE STATE
ON ACCOUNT OF SUCH CONTRACTS:

Under the Act of 1939, Commissioner of Agriculture should make new contracts in regard to control of Bang's disease. Since Legislature made no appropriation for payment for indemnity then the Commissioner would not be authorized to enter into a contract and if he does the State would not be liable thereon.

December 10, 1940.

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

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Dear Sir:

In reply to yours of recent date, wherein you request an opinion on the following statement of facts:

"You will recall that the Sixtieth General Assembly passed House Bill 667, which pertains to the control of Bang's disease, also House Bill 716, which illegally sought to enact an appropriation of \$10,000.00 for the payment of indemnity on cattle reacting to the agglutination test, under the provisions of Section 12,536-f of House Bill 667, which may be found on page 240, Laws of Missouri, 1939. For your information, we are enclosing copy of opinion from your office relative to this appropriation.

"In view of the fact that owners of Bang's reacting cattle sent to slaughter must sign a waiver agreement with the United States Department of Agriculture, Bureau of Animal Industry, whereby they waive claim to indemnity for reacting cattle sent to

slaughter, unless the State also pays indemnity, the question arises as to whether any liability rests against the State under the provisions of House Bill 667. We are attaching hereto the form of waiver agreement signed by owners of cattle condemned as reactors to the test to Bang's disease.

"Section 12,536-b of House Bill 667 reads as follows: 'within the amounts, which may be appropriated for this purpose, the State may pay such proportion of the indemnity and 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, provided, however, that such amounts paid for indemnity on each individual animal by the State shall not exceed the amount paid by the United States.'

"Under the phrasing, 'within the amounts, which may be appropriated to pay such proportion of the indemnity, etc.,' we have taken it for granted that the State has no liability for any alleged 'deficiencies', since there was no legal appropriation for any amount. We especially desire to ask whether there is legal liability for indemnity beyond the amounts appropriated for indemnity.

"Permit reference to Section 12,536-d of House Bill 667, which provides for making an agreement under the act with the United States Department of Agriculture. No such agreement has been made under the new law of 1939, because we had no appropriation under the new law. Is not a new agreement provided for and needed under House Bill 667?"

We note in your request that the \$10,000.00 appropriation for the carrying out of the provisions of Section 12536-b, Laws of Missouri, 1939, page 237, was held unconstitutional and void by this department by the opinion referred to therein. That being the case, your department would not be authorized to incur any liability for the enforcement of this act, because it would be in violation of the provisions of the Constitution. We refer you to Section 19, Article X of the Constitution, which provides as follows:

"No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such sum or object. A regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

Your authority to enter into such contracts is derived from Section 12536-b, page 237, Laws of Missouri, 1939. This section reads as follows:

"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, appraisal, payment of indemnity, 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 indemnity and 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 State Department of Agriculture, provided, however, that such amounts paid for indemnity on each individual animal by the State shall not exceed the amount paid by the United States."

You will note that the liability of the State is limited to the amounts which may be appropriated for the purpose of carrying out the provisions of said section. Since no money was appropriated, then there can be no liability of the State under this section. This rule is announced in Vol. 59, C. J., at page 300, Section 459, in the following language:

"A state, by reason of its sovereignty, is immune from suit and it cannot be sued without its consent, in its own courts, the courts of a sister state, or, by an individual, in the federal courts. * * * * *"

This rule is followed in Missouri in the case of *State v. Bates*, 296 S. W. 1. c. 420, and announced in *Merchants' Exchange v. Knott*, 212 Mo. 616, 1. c. 647.

In *Cassidy v. St. Joseph*, 247 Mo. 197, 1. c. 205, the Court, in discussing the liability of the State for accounts of its agents, said:

"Neither the State nor those quasi-corporations consisting of political subdivisions which, like counties and townships, are formed for the sole purpose of exercising purely governmental powers, are, in the absence of some express statute to that effect, liable in an action for damages either for the non-exercise of such powers, or for their improper exercise, by those charged with their execution. This applies alike to the acts of all persons exercising these governmental functions, whether they be public officers whose duties are directly imposed by statute, or employees whose duties are imposed by officers and agents having general authority to do so. * * * * *"

Under Section 12536-d, Laws of Missouri, 1939, at page 238, it seems that the lawmakers contemplated that some sort of an agreement might be entered into by the State of Missouri and the United States Department of Agriculture and the owner of the live stock which might be condemned. This section provides as follows:

"In lieu of separate agreements between (1) the State and the owner and (2) the United States Department of Agriculture and the owner, the Commissioner of Agriculture is hereby authorized to enter into an agreement with the cooperating agencies of the United States Department of Agricul-

ture for a joint agreement with the owner of cattle to be tested for Bang's disease, said agreement setting forth the respective undertakings of (1) the State (2) the United States and (3) the owner, provided that the said United States Department of Agriculture shall approve such joint agreement."

This section must be read together with Section 12536-b and, by doing so, it will be seen that no liability on the part of the State of Missouri could be incurred which was without the amounts appropriated for the purpose of carrying out said act.

You state in your letter that this State, under the 1934 agreement with the United States Department of Agriculture authorized the Federal Department to test cattle for Bang's disease and pay federal indemnity only. In view of the fact that the General Assembly of Missouri in 1939 enacted Sections 12536-b and 12536-c, and also Sections 12536-d and 12536-e, under the rules of statutory construction, these sections would be controlling now, and, therefore, the old agreements with the Department would not be applicable.

We have examined the copy of the waiver agreement which you have enclosed, which was used under the 1934 agreement. Since the State of Missouri is not a party to that agreement, and since no appropriation was made by the General Assembly, nor was any legislation enacted authorizing an appropriation under the 1934 agreement, then, under the rules hereinbefore announced, the State of Missouri could not be liable on those agreements.

CONCLUSION.

From the foregoing it is the opinion of this department that since no appropriation has been made by the General Assembly to carry out the provisions of said sections

12536-b, 12536-c, 12536-d, and 12536-e, Laws of Missouri, 1939. And since the lawmakers limited the liability of this State to the amount appropriated, then there is no legal liability on the part of the State of Missouri for indemnity which might be incurred by your department signing agreements with the Department of Agriculture and the owner of cattle which might be condemned.

We are further of the opinion that if and when appropriations are made as provided by Section 12536-b that any joint agreements as provided by said Section 12536-d, Laws of Missouri, 1939, should be entered into wherein the State of Missouri, the United States and the owner of animals condemned should be parties.

We are further of the opinion that the Commissioner of Agriculture should not enter into such agreements until an appropriation has been made by the General Assembly, as provided by said Section 12536-b, Laws of Missouri, 1939, page 237.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General

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